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HEARING

IN THE MATTER OF:

SATELLITE RATE ADJUSTMENT

DOCKET NO.

96-3 CARP-SRA

Wednesday,
March 19, 1997

CARP Hearing Room LM414
Library of Congress
101 Independence Ave., S.E.
Washington, D.C. 20540

The above-entitled matter came on for hearing,
pursuant to notice, at 9:30 a.m.

BEFORE:

THE HONORABLE LEWIS HALL GRIFFITH, Chairperson

THE HONORABLE JOHN W. COOLEY

THE HONORABLE JEFFREY S. GULIN

NEAL R. GROSS

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David Hummel, Witness
Marsha Kessler, Witness
Robert W. Crandall, Witness
Allen R. Cooper, Witness

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C-O-N-T-E-N-T-S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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Allen R. Cooper

By Mr. Lane	1051		1170	
By Mr. Seiver		1073		1174
By Mr. Garrett		1140		1184
By Ms. Woods		1168		

Robert Crandall

By Ms. Behan	1190			
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John F. Wilson

By Ms. Woods	1215		1322	
By Mr. Seiver		1258		

E-X-H-I-B-I-T-S

<u>Exhibit No.</u>	<u>Description</u>	<u>Mark</u>	<u>Recd</u>
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SBCA

7-X	Cable TV Programming 09-30-95		1311
16-X	Federal Register p. 19052		
17-X	"Programmers Warehouse"		1106
18-X	Alternate Table, Allen Cooper		1109
19-X	CPB Web Page		1268
20-X	PBS 0147 and 0148		1282
21-X	Article 04-30-93		1303
22-X	PBS 0153		1306

PBS

2	Video		1244
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P-R-O-C-E-E-D-I-N-G-S

(9:32 a.m.)

CHAIRMAN GRIFFITH: Ladies and gentlemen,
good morning. We seem to be dwindling in size at the
moment, but hopefully others will be here.

In anticipation of our Saturday session,
this Saturday, I need a list of the individuals who
are going to be here, so that we can provide that to
the security personnel. So I am going --

JUDGE GULIN: And for the second Saturday.

CHAIRMAN GRIFFITH: Yes. And for the
second Saturday. I have this, only at this particular
point, set up for this Saturday, the 22nd. We'll do
another one for the second Saturday. But I'm simply,
as we start, just going to pass this around and ask
you to sign your respective names to gain admittance
to the building on March 22, 1997. And I have taken
the liberty of setting the starting time at 9:30 a.m.
Is that agreeable?

MR. LANE: Do you want to start earlier?

JUDGE GULIN: You want to start earlier?

MR. LANE: It would be nice. The earlier

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1 we could start the better for me. 9:00? I guess it's
2 up to the Panel, I mean, but --

3 CHAIRMAN GRIFFITH: 9:00 is fine with both
4 of them.

5 (Laughter.)

6 MR. LANE: I guess it's two to one then,
7 huh?

8 (Laughter.)

9 CHAIRMAN GRIFFITH: So I am overruled
10 again.

11 (Laughter.)

12 Do you want to just start it out, then,
13 and just pass it around. We can go ahead and get
14 started as we're going.

15 Are there any other preliminary matters
16 this morning before we begin taking testimony? All
17 right.

18 Mr. Cooper, raise your right hand, please,
19 sir.

20 WHEREUPON,

21 ALLEN R. COOPER

22 was called as a witness by Counsel for the Program

1 Suppliers and, having been first duly sworn, assumed
2 the witness stand, was examined and testified as
3 follows:

4 CHAIRMAN GRIFFITH: Let the record reflect
5 that the Court Reporter has been previously sworn and
6 remains under oath. All right.

7 All right, sir?

8 DIRECT EXAMINATION

9 BY MR. LANE:

10 Q Would you please state your name for the
11 record?

12 A Yes. My name is Allen R. Cooper.

13 Q How long have you worked in the television
14 and cable industry, Mr. Cooper?

15 A In the TV and cable industry,
16 approximately 50 years.

17 Q Could you briefly describe or summarize
18 that experience for us?

19 A Yes. Probably my first involvement with
20 television was in an advertising agency, probably
21 World War II, I did work at the Olgilvy, Mather &
22 Benson Agency with one of the clients. Subsequently,

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1 I started with the National Broadcasting Company in
2 1952 as primarily -- first job was rate specialist, at
3 which time I was there to set the rates for the
4 affiliated stations and to begin to establish the
5 television network, selecting the stations and so
6 forth.

7 From there, I started -- saw a vacuum, and
8 I suggested we have a corporate planning unit, which
9 was established and I was the first Director of
10 Corporate Planning, and ultimately Vice President of
11 Planning at the National Broadcasting Company. I was
12 there from 1952 to 1973 in the capacities which I've
13 indicated in my testimony.

14 In 1973, I moved over to Public
15 Broadcasting in Washington, and there I was a Research
16 Director and handling various types of things,
17 including audience measurement for public broadcasting
18 -- a very difficult job, as I also indicated in my
19 testimony.

20 In 1977, I was invited by Jack Valente to
21 join him at the Motion Picture Association as Vice
22 President, New Technology and Planning -- Technology,

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1 Evaluation, and Planning. And that's the position I
2 hold today.

3 However, the original outline of the job
4 changed radically when I joined MPAA, because it was
5 concurrent with the passage of the Copyright Act of
6 1976, and my company was deeply engaged then in
7 determining how it would affect our companies, our
8 member companies, and how we would handle the
9 distribution of royalties, and so forth.

10 And largely, a plan was -- I conceived a
11 plan -- it was the one that has been used since the
12 beginning, in terms of distribution of the royalties.
13 It is one based upon audience and Nielsen data, and it
14 has been a very effective and very accepted type of
15 methodology. And that same type of plan has
16 subsequently been adopted, with my involvement, in
17 Europe and in Canada, and the same type of plan
18 operates there.

19 Meanwhile, at the MPAA, I have been deeply
20 involved in various governmental matters and in
21 appearances before the Federal Communications
22 Commission, and working closely on other matters. I

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1 think that's about the fastest summary I can give you
2 of 50 years in this business.

3 Q Mr. Cooper, have you testified previously?

4 A Yes, I have testified at all proceedings
5 of the Copyright Royalty Tribunal, and subsequently
6 with CARP.

7 Q And have you testified previously
8 regarding the satellite carrier rate adjustments?

9 A Yes, I have.

10 Q Do you have before you a document entitled
11 "Testimony of Allen R. Cooper, Vice President, Motion
12 Picture Association of America, Inc."?

13 A Yes, I do, sir.

14 Q And is that your testimony in this
15 proceeding?

16 A That is my direct testimony.

17 Q Do you have any corrections to that
18 testimony?

19 A Yes, I have a few small things that I'd
20 like to correct, please. On page 4 of this testimony,
21 in the second -- the lower half, I mislabeled the
22 company whose data I was providing. It is not

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1 Programming Warehouse; it is Programmers Warehouse.

2 On page 5, there is -- I made an error in
3 terms of the price I put down for KTLA Los Angeles.
4 It's the third one from the bottom in the list, on the
5 left side. That figure should be 89 cents, the same
6 as for GN and these other stations. And as a result
7 of that change, the figure on top of the page, the
8 only "Powerview" should be revised to \$9.10, rather
9 than \$9.68.

10 On that same page, as a result of making
11 those changes, there are some other little variations,
12 because I discuss that table down below. On the
13 second line, will you please change \$9.16 to \$9.10, to
14 conform to what I said. And then on the penultimate
15 line, the difference between the a la carte total of
16 \$9.10 and \$2.48 is \$6.62, which is only 10.3 percent.
17 It's a minor change, but I wanted the record to
18 reflect the accurate numbers.

19 Turning now to --

20 JUDGE GULIN: I'm sorry. What was that
21 last line again? It should read a la carte totals
22 \$9.10.

1 THE WITNESS: And \$2.48 is \$6.62.

2 JUDGE GULIN: Right. And what about
3 that --

4 THE WITNESS: Which is only 10.3 percent.

5 JUDGE GULIN: 10.3.

6 THE WITNESS: Yes.

7 Finally, on page 10, the number of
8 stations which are listed there -- there are not 11
9 non-broadcast channels. There are only 10. And so
10 the figure -- the \$75.20 still applies. However,
11 we're dealing now with 10, and so the per channel
12 figure is \$7.52, rather than \$6.84. And those are the
13 only changes I have.

14 MR. LANE: At this time, Mr. Chairman, I
15 would make Mr. Cooper available for voir dire.

16 MR. SEIVER: No questions.

17 CHAIRMAN GRIFFITH: No questions. Thank
18 you.

19 All right. Mr. Lane, go ahead.

20 MR. LANE: Thank you.

21 BY MR. LANE:

22 Q Mr. Cooper, did you ever have occasion to

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1 work on simplifying the cable royalty rate structure?

2 A Yes, sir.

3 Q And could you describe your involvement in
4 that process?

5 A For a long time, gentlemen, the Section
6 111 proceeding was very complicated and was getting
7 more awkward as cable began to develop alternate basic
8 services. When we started out, they had one basic
9 service and it was quite simple, in terms of following
10 Section 111. But as they got limited basic and super
11 basic and all of the other kinds of things, it got to
12 be very complicated. Also, there were other things
13 that were happening that made the work more
14 complicated.

15 And to make a long story short, in 1990 --
16 in 1986, I began working with a group of people from
17 my company and with the National Cable Television
18 Association to try to reach a simplified flat rate
19 basis. It would be a rate per subscriber per signal,
20 rather than one based upon some element of different
21 gross receipts, whether it was partially distant or
22 what have you -- all of these complications that had

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1 occurred in Section 111.

2 And the group of us from the National
3 Cable Television Association and the MPAA, the ones
4 that were most responsible in terms of interest in
5 this thing, reached an agreement. We were able to
6 reach an agreement on a flat rate per subscriber per
7 month figure, going back using data from the
8 statements of account. And we presented this proposal
9 to our companies, and they rejected it, which was one
10 of the biggest disappointments in my whole business
11 career -- to have that turned down.

12 Anyhow, those were -- the work that we did
13 was intensive work based upon the statements of
14 account that had been filed by cable systems in 1983
15 and '84, which were the most recent available to us
16 then.

17 As a result of that work, we had proposed
18 two different rates, one for independent stations and
19 one for network affiliates and public broadcasting.
20 And again, that was the four to one ratio that I know
21 that I testified about in previous proceedings. And
22 the rates were, at that time, that we had proposed

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1 were three and 12 cents. They were based upon the
2 1983-'84 data.

3 We then updated them and tried to project
4 into the future taking inflation into account, and so
5 forth. And we came up with another set of figures,
6 and those are the ones that were subsequently proposed
7 for the Section 119.

8 Q And those are the 12 cent/3 cent rates
9 that were originally in 119?

10 A The Section 119. Those are not
11 marketplace rates. Those are just the rates that were
12 derived from this historical precedent.

13 Q What is the purpose of your testimony in
14 this proceeding, Mr. Cooper?

15 A In my previous testimony, I made reference
16 to the fact that the data that were available to me
17 indicated that the prices charged by the distributors
18 of programming to -- via satellite, the TVRO owners
19 and the people in that group, were essentially in the
20 range of \$1 to \$1.10. And I felt that my testimony at
21 that time indicated that the rates that we could
22 receive for the use of our programming could be

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1 substantially increased without affecting the prices
2 to consumers for the uses of them.

3 And essentially, my testimony today to you
4 is to review and to reinforce essentially the same
5 conclusion, and that is that the rates charged by the
6 suppliers to consumers is over \$1 per month per signal
7 for a broadcast signal.

8 Q How do subscribers purchase satellite-
9 delivered programming?

10 A Most subscribers pick up packages of
11 programs which are broadcast and non-broadcast, pay
12 and non-pay programs that are offered by these various
13 distributors. And I think that these range all over
14 the lot, and many of these packages -- the same
15 distributors will offer three packages or four
16 packages or five packages, with an increasing number
17 of programs on at different rates.

18 The rates they charge are usually either
19 on a monthly basis or a quarterly basis or an annual
20 basis, with, of course, a discount for an annual versus
21 applying it on a monthly or a quarterly basis.

22 In addition to the -- but most of the

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1 buying -- I believe most of the programming that TVRO
2 owners receive are acquired via these packages that
3 these distributors put together.

4 Q Is there another type of option for
5 subscribers?

6 A Yes, there is.

7 Q And what is that?

8 A In addition to packages, the distributors
9 offer additional services, additional channels, on
10 what they call an a la carte basis, where they have an
11 individual price for a particular channel. And this
12 is cited in their rate cards, and subscribers can just
13 buy one channel or one particular one, or another
14 particular channel. They can buy -- for example, they
15 can buy a package with a small number of channels and
16 add one or two or three stations on an a la carte
17 basis.

18 But those are the principal differences
19 between -- with the way that programs are offered to
20 consumers by the distributors, either as packages or
21 as a la carte, or as combinations of consumer wants.

22 Q Did you analyze the pricing and services

1 offered on package and a la carte?

2 A Yes, I did.

3 Q And is that shown or one of the examples
4 shown on page 5, Table 1, of your testimony?

5 A Yes, that is.

6 Q Could you explain what this table -- how
7 you went about putting together this table and what it
8 shows on page 5?

9 A A distributor name, Programmers Warehouse,
10 is offering -- in August of 1996 is offering six
11 different packages at monthly rates, and these
12 packages range from \$12.95 to \$18.95. And all six
13 include at least one broadcast channel. WTBS was the
14 only one with Prime Choice at \$12.95 for the package.

15 And four broadcast channels -- WTBS, WGN,
16 KTLA, and WPIX -- incidentally, I hope that you will
17 excuse me for not using TBS rather than WTBS or not
18 saying W -- whatever these other names are -- WWOR,
19 for example, which is a new call sign. They are
20 included in the most expensive package.

21 What I did, I looked -- the channels
22 included in only one of these packages -- I'm just

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1 comparing the items in the Powerview package, which is
2 the cheapest one at \$9.10. The whole Powerview
3 package is \$18.95, and the Prime Choice package was at
4 \$12.95.

5 I looked at which programs were only in
6 the Powerview package and which programs were only in
7 the Prime Choice, and you see that in the Powerview
8 package there are three broadcast channels -- KTLA,
9 WGN, and WPIX.

10 Now, the total aggregate of these channels
11 that were only in the Powerview package is \$9.10. And
12 the four channels in Prime Choice, but not Powerview,
13 have an aggregate of \$2.48. The difference is \$9.10.

14 Q No. Excuse me.

15 A No, the difference between the \$9.10 and
16 the \$2.48 is \$6.62, which is essentially very close,
17 within 10 percent, of the difference between the
18 package price -- the \$18.95 for one and the \$12.95 for
19 the other. I just do that to indicate that these are
20 the signals that account for the difference in the
21 prices between the two packages.

22 Q Mr. Cooper, looking at Table 1, are the

1 numbers that are shown in parentheses the a la carte
2 price for the channel? For example, the first one
3 under Powerview -- Bravo -- is an 89 cent --

4 A These are only a la carte prices.

5 Q And is it true that there are other
6 channels offered both on Powerview and Prime Choice?

7 A Yes, there are.

8 Q And these are the ones you've isolated as
9 only being on Powerview on one hand and only being
10 on --

11 A That's correct.

12 Q -- Prime Choice.

13 Did you analyze any other situations in a
14 similar fashion?

15 A Yes. I looked at --

16 Q Can you describe that for us, please?

17 A Yes. Incidentally, most of the data that
18 I am referring to goes through 1996, and it was
19 obtained at the Satellite Broadcaster Convention in
20 Nashville during August of 1996.

21 Okay. Now, national programming service
22 has had similar things. They have a family pack of 43

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1 channels, and they have a basic economy package as
2 well of 29 channels at \$8.95. Again, just isolating
3 those -- the programs which were not carried --
4 channels which are not carried on both, I found that
5 the difference between buying the stations which were
6 not on both to be \$10.86, or only 86 cents more than
7 buying them as a family pack.

8 I think the only point that I would like
9 to make there is that, generally, the a la carte
10 prices are somewhat higher, you know, if you buy on an
11 a la carte basis, than they would be when you buy on
12 a package basis. And that's why people buy it on a
13 package basis.

14 Q You mentioned earlier that program
15 providers offer services on a monthly, quarterly, and
16 annual basis. Is there any discount involved in those
17 situations?

18 A Yes, there is.

19 Q Could you describe that?

20 A I think that there is a price for the
21 annual, which I believe is about -- probably 75
22 percent less than the aggregate of the monthly prices.

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1 In other words, it's nine times the monthly price,
2 rather than 12 times.

3 Q Mr. Cooper, is there something called the
4 average price per channel for packages?

5 A Well, there has been talk about
6 calculating that. It's very easy to do that. If I
7 have a price of, let's say -- I will just make things
8 easy -- of \$20 a month for a package, and I have 20
9 channels, then you would say that the average price
10 per channel was \$1. And that's a calculation, but I
11 will indicate in my testimony it's a very misleading
12 type of number.

13 Q Why do you say it's a misleading type of
14 number?

15 A Because the packages vary in terms of
16 their content. And some of the packages contain
17 programs which are priced at a higher rate than other
18 channels. For example, a channel with multiple pay
19 services would have a higher average price per channel
20 than one with no pay services, because the pay
21 services are the most expensive channels offered to
22 subscribers.

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1 Q And did you provide some examples of this
2 on page 7 of your testimony?

3 A Yes, I did.

4 Q And would you describe what is shown at
5 the bottom of page 7?

6 A We are discussing there the rate card by
7 Netlink, which does provide services to the TVROs.
8 It's a distributor and a dealer, and they had four
9 channels -- four different services that they were
10 dealing with. And the number of channels varies, as
11 I show on page 7, from 13 in one package to 54 in
12 another.

13 And subsequently, the price per channel,
14 if you took that average price, calculated the way I
15 said you would do it, you can see that the variation
16 is from 45 cents in the One Stop package to more than
17 double that in the absolute package of 97 cents. If
18 I remember correctly, the absolute package may have
19 four pay services, whereas the One Stop may have no
20 pay services at all.

21 Q Mr. Cooper, do all four of these packages
22 have the same channels on them -- for example, WTBS?

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1 A They all have WTBS, and they also include
2 WGN.

3 Q So if we were looking at the average price
4 per channel for WTBS, if we picked one or the other
5 one we would get a different result. Is that correct?

6 A That is exactly right.

7 Q Did you survey the a la carte prices
8 offered by program providers?

9 A Yes, I did, sir.

10 Q And why did you focus on a la carte prices
11 for the survey?

12 A I think a la carte prices are particularly
13 significant for the Panel to consider, because these
14 are choices made by the consumers, channel by channel,
15 and it indicates what they want to have in addition to
16 what they're getting or could get in a package, and
17 what they are willing to pay for them. And so from
18 that standpoint, it is a very, very significant kind
19 of number.

20 Q Did you summarize the results of your
21 study on page 9 of your written testimony?

22 A I did that. It is in Table 2 on page 9.

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1 Q And could you describe what is in Table 2
2 for us?

3 A As I indicated, we looked on a lot of
4 these advertisements and brochures that we picked up,
5 the SBCA, and focused primarily on the broadcast
6 signal, the a la carte prices for broadcast signal by
7 all of these various distributors of programming.

8 Table 2 summarizes the data for all of
9 these distributors -- Cox, Jones, National
10 Programming, and so forth, down to Turner Vision. And
11 on an a la carte basis, we were able to find 110
12 broadcast channels being offered by these
13 distributors.

14 If you'll look at the bottom line where it
15 says total, you'll see that the sum of the a la carte
16 monthly rates for these broadcast channels was
17 \$128.92. And since there were 110 of them, the
18 average price charged per broadcast channel on an a la
19 carte basis per month is \$1.17.

20 Q Did you also analyze the annual a la carte
21 prices for broadcast and non-broadcast channels?

22 A Yes, I did. I would not have liked to

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1 have used annual, but sometimes I had only annual
2 prices.

3 Q And is a summary of that study shown on
4 pages 10 and 11 of your testimony?

5 A Yes, sir.

6 Q Could you briefly describe what is shown
7 on Table 3 on page 10 of your testimony?

8 A Table 3 goes to the National Programming
9 Service and their annual subscriber fees on an a la
10 carte basis for the signals which are indicated there,
11 starting with A&E which is Arts and Entertainment, and
12 continuing to WTBS. The total for those channels
13 which are listed is \$178.05. You would add the \$9.95
14 and the \$14.95 for CNN Headline News, and so forth.

15 There are 11 broadcast channels listed
16 there, and the total -- the aggregate annual
17 subscriber fee for the 11 broadcast channels was
18 \$102.85, or \$9.35 per channel, or -- that's it. There
19 are 10 non-broadcast channels carried, with an
20 aggregate annual price of \$75.20, which divided by 10
21 is \$7.52, the easiest calculation I did make. And
22 those are the figures that are shown there, and that's

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1 National Programming Service in July of 1996.

2 Q And what do you show on Table 4 on page 11
3 of your testimony?

4 A Table 4 is a similar tabulation for a
5 distributor called Turner Vision. Again, we have --
6 I show the averages for the broadcast channel and for
7 the non-broadcast channel. And what you see there is
8 that the pricing on Table 4, you'll see that there's
9 a higher price charged for the broadcast channels than
10 for the non-broadcast channels. In this case, in
11 Table 4, the difference is between \$10.02 and \$10.92.

12 But go back to Table 3, you'll see a
13 similar situation there. You'll see there that the
14 average per channel for the broadcast channel was
15 \$9.35 versus \$7.52 for the non-broadcast channel. So
16 very simply, what these a la carte data show is that
17 the distributors charge more per channel for a
18 broadcast channel than they do for a non-broadcast
19 channel.

20 Q Has there been any substantial change in
21 the broadcast rates since your 1992 tabulation?

22 A Very, very minor. I think that the

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1 figures are -- as I indicated at the outset of my
2 testimony, we were a little over a dollar per signal
3 in 1996, 1998, and it's somewhat higher now.

4 Q Did you analyze licensing fees charged for
5 various channels?

6 A Yes. I found that to be possibly the most
7 interesting part of this analysis -- evidence I'm
8 trying to bring to you. And that, again, indicates --

9 Q Excuse me. Mr. Cooper, is that shown on
10 Table 5 --

11 A Yes, on page --

12 Q -- page 12 of your testimony?

13 A -- 12. Yes. I think the major point that
14 I put Table 5 together -- and these are the license
15 fees for all of these channels based upon the best
16 information available to me, and that came from the
17 Kagan Group. You'll see that a broadcast channel --
18 for example, WTBS, WGN, WWOR at the bottom, and then
19 the next group, WPIX and so forth, or the PT -- Prime
20 Time 24 above that, about the fifth one from the
21 bottom is only six cents. The Denver Five is only six
22 cents.

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1 What these data show is that the license
2 fees that distributors -- that the Satellite Carriers
3 pay for the broadcast signals is much less than the
4 license fees they pay for the non-broadcast signals.
5 And yet, they charge more for the broadcast signals
6 than they do for the non-broadcast signals.

7 MR. LANE: Those are all the questions I
8 have on direct, Mr. Chairman.

9 CHAIRMAN GRIFFITH: All right. Cross
10 examine?

11 MR. SEIVER: Thank you.

12 CROSS EXAMINATION

13 BY MR. SEIVER:

14 Q Good morning again, Mr. Cooper.

15 A Good morning, sir.

16 Q For the record, I'll introduce myself.
17 I'm John Seiver, co-counsel for the Satellite Carriers
18 here. It's nice to meet you. Your experience exceeds
19 I believe everybody in the room by probably a factor
20 of a multiple.

21 A It's just longevity.

22 Q And we've also had some witnesses that

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1 have testified for the first time, in distinct
2 contrast to you, and I've warned them that if they
3 didn't understand me to ask me to reask the question.
4 And some of the -- I think it should probably be the
5 other way around. You'll probably be able to tell me
6 a few things, too.

7 A Possibly.

8 Q If I don't ask the right question, you let
9 me know.

10 You also said you were at the SBCA
11 Convention last year?

12 A I was not there. I said we were
13 represented at the SBCA Convention, and at that
14 convention we picked up all of these brochures from
15 the different distributors.

16 Q You yourself didn't go to the convention?

17 A No, sir.

18 Q Somebody that worked for you picked up all
19 of those brochures?

20 A One of the associates of Dennis Lane at
21 his law firm.

22 Q I see. I need his name, so I can have him

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1 stricken from the --

2 A John Collins.

3 Q Thank you.

4 A You're welcome.

5 Q You yourself, then, didn't talk to any of
6 the people that were at the convention?

7 A No.

8 Q Either the distributors, the packagers --

9 A I was not in Nashville.

10 Q Have you ever had the opportunity to meet
11 any of the satellite carriers or packagers or
12 distributors?

13 A I have met them at different occasions at
14 NAB and SMPT, and so forth.

15 Q Do you have a general understanding how
16 the satellite industry is structured?

17 A Yes, indeed.

18 Q And would it be fair to say that there is
19 a group that we represent here today -- and when I say
20 "we" I'm referring to myself and Mr. Glist -- the
21 satellite carriers, that actually receive an uplink
22 programming?

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1 A Yes, I understand that.

2 Q And the satellite carriers also --

3 A They also make the uplink.

4 Q Pardon me?

5 A They also make the uplink.

6 Q That was going to be my point.

7 A You said "receive," you know.

8 Q Pardon me. They get this --

9 A Generate the uplink.

10 Q Okay. Maybe I should have just asked you
11 to explain the industry and --

12 (Laughter.)

13 -- it would have been quicker.

14 Would you tell us what the satellite
15 carriers do?

16 A They pick up a signal that has been
17 broadcast or which they acquired via license, and they
18 send it up to a satellite or a transponder 22,300
19 miles above the equator, and then they retransmit that
20 to their subscribers.

21 Q And who pays for this reception/uplinking
22 process?

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1 A The satellite carrier.

2 Q That's their investment?

3 A That's right. It's their expense.

4 Q And without that expense, none of the
5 broadcast programming that we've looked at here would
6 be available to a dish owner?

7 A It would not be, except locally, if it was
8 local or via cable.

9 Q Or via cable. But that also has to be
10 satellite or delivered microwave unless it's local,
11 right? And so you --

12 A Probably has to be delivered somehow to
13 the cable head end.

14 Q So even the cable operators rely on the
15 satellite carriers to get these signals?

16 A Probably for most of their non-local
17 broadcast programming.

18 Q Do you understand how the authorization
19 process works for a satellite carrier that is selling
20 one of its signals?

21 A Do you mean the -- on the broadcast
22 signals they have a compulsory license.

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1 Q I meant the authorization process for
2 subscribers. How does a subscriber --

3 A Yes.

4 Q -- call them up?

5 A Yes. A subscriber goes to a local dealer
6 or he contacts them, and then there is an
7 authorization. And once the distributor feels that
8 he's got the right money, he then calls it in to the
9 satellite carrier and the satellite carrier would then
10 authorize the signal to be sent to that subscriber's
11 receiver.

12 Q And that's what I was specifically asking
13 you about. Do you understand how that satellite
14 carrier authorizes that subscriber's receiver?

15 A Yes. This is all a telephonic kind of
16 thing, and the satellite -- the control center -- most
17 of the contract centers at one time were with a
18 General Instrument establishment in California. And
19 the authorization went from the licensee to the
20 authorization center that then authorized the signal
21 to be received via the particular subscriber.

22 Q And do you know who pays for the operation

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1 of the authorization center?

2 A That's also paid for by the satellite
3 carrier.

4 Q And do you understand that at the
5 authorization center there is a separately uplinked
6 data stream that contains the codes for authorizing
7 the receivers?

8 A Yes. This was discussed at the previous
9 kind of hearings that is part of that record. And if
10 I recall, the estimated cost for all of this work for
11 the authorization was a penny or two cents.

12 Q Whose estimate was that?

13 A This was in the testimony of last year.

14 Q You don't recall that there was different
15 testimony of a much higher rate?

16 A I did not read that testimony.

17 Q Now, as far as the authorization is
18 concerned, generally, I think you testified that most
19 subscribers buy in packages, is that right?

20 A Yes, they do.

21 Q I think you said in your testimony,
22 actually, the largest part of their revenues come from

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1 the same of packages?

2 A That's correct.

3 Q Do you know how many of a particular
4 distributor's subscribers buy a la carte?

5 A How many buy a la carte? Perhaps -- let
6 me see. I don't know a particular number. The only
7 number I have -- the only numbers that I have access
8 to are the numbers that were filed with the statements
9 of account by the carriers, and so I just have a total
10 number of the homes of the subscribers that were
11 receiving that signal.

12 Q But that doesn't give you any indication
13 as to whether one or five or 5,000 --

14 A Does not.

15 Q -- bought a la carte. But your testimony
16 stands that most, or the largest part, buy packages?

17 A Yes. It depends upon the programming
18 that's in packages and the variations that -- some
19 types of programs are more likely to be offered on an
20 a la carte basis than others are.

21 Q And those are like the pay and the premium
22 services that are generally offered a la carte?

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1 A And also the broadcast services. And this
2 is particularly true of some of the superstations and
3 especially the -- those signals which are subject to
4 being carried only in white areas of a broadcast
5 station.

6 Q Cable operators also package their
7 programming, don't they?

8 A Yes, they do.

9 Q Do they sell signals a la carte, do you
10 know?

11 A They sell some signals a la carte, yes.

12 Q Pay and premium signals?

13 A Pay signals and also non-pay signals.

14 Q They have established --

15 A Yes. I had been the subscriber to an MMDS
16 system in Washington, and you have a choice there of
17 how many signals you want to pay for.

18 Q But for cable operators, it is mostly
19 packages?

20 A That's true. I think that probably the
21 big exception for most cable systems are the premium
22 channels.

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1 Q And cable operators that deliver distant
2 superstation signals pay a different royalty than the
3 satellite carriers, am I right?

4 A Their royalties -- the satellite carrier's
5 royalty is a flat royalty, whereas there may be some
6 -- depending upon the size of the cable system, and
7 other factors like that, that would determine how much
8 a particular cable system pays for a superstation, for
9 example.

10 Q Well, there are two different statutes,
11 aren't there, governing the royalties?

12 A That's correct.

13 Q And Section 111, which the Panel has heard
14 a lot about, governs cable, right?

15 A That is correct.

16 Q And it also governs MMDS?

17 A Yes, it does.

18 Q And when you buy -- do you buy any
19 broadcast stations from your MMDS operator?

20 A I receive all local and some distant
21 stations from my MMDS.

22 Q And what do you pay for a distant station

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1 from your MMDS operator?

2 A I have no idea. I can get into a very
3 emotional story, and I'm not --

4 Q You don't know what you pay for your
5 distant signals?

6 A I don't know how much I pay for that.

7 Q But whatever, the MMDS operator is also
8 eligible for the cable royalty treatment, the same
9 license --

10 A That's correct.

11 Q -- fee as the cable royalty?

12 A That's correct.

13 Q And I think you testified -- and I
14 understand you're an expert, and I admire the work
15 that you had done early, and I'm sure you watched with
16 interest as this has progressed over these years for
17 copyright reform. But I want to understand, when you
18 testified in a prior proceeding, you did make an
19 effort to calculate what the average cable royalty
20 rate was?

21 A Yes. This was as I indicated -- I
22 testified this morning, in connection with the

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1 negotiations we had with NCTA.

2 Q Right. And before the Satellite Home
3 Viewer Act was passed, had you been part of the group
4 that made the determination that the average cable
5 rates were expected to be 12 cents for the distant
6 stations and three cents for the distant network
7 stations?

8 A I do not particularly remember being
9 involved with the legislative part of that. That is
10 more the work of our legal staff and --

11 Q Well, were the numbers your numbers, the
12 12 and the three?

13 A Yes. Well, they weren't my numbers. They
14 were the numbers that were -- no, please, they weren't
15 my numbers. They were numbers that were reached in
16 agreement with the cable people.

17 Q But you worked on that?

18 A Oh, indeed. I did a lot of work on that.

19 Q Have you had occasion since that time to
20 look and make a determination of what the average
21 cable rate is?

22 A I haven't done so.

1 Q Mr. Lane didn't ask you to do that for
2 purposes of this proceeding?

3 A He did not.

4 Q When cable operators pay their rate, I
5 think you explained that it's based on revenues as
6 opposed to the flat per subscriber fee that satellite
7 carriers pay.

8 A That is correct. It is based upon the
9 gross rates. So for basic service, however that is
10 defined by the cable operator.

11 Q That would be the percentage of the gross
12 receipts for the tier of service that has the
13 broadcast channels on it?

14 A That's correct.

15 Q And there's a certain percentage that is
16 applied against that. Is it .09, whatever?

17 A That's correct. That's the way it's
18 calculated.

19 Q You understand that better than I do. So
20 if cable operators were looking at paying their
21 copyright royalties, they generally put their
22 broadcast channels on their lowest level of service,

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1 am I right?

2 A Of course, the higher they charge for
3 basic service, the more royalties they would pay. So
4 they would be inclined to put a lower rate on it.
5 However, this is offset by the fact that so many
6 subscribers buy only the basic service. And so if
7 they go too low, they're going to find themselves in
8 a losing proposition.

9 There is one other change I should make,
10 Mr. Seiver, and that is that cable systems -- so-
11 called smaller cable systems -- do not pay royalties
12 on the basis of their gross receipts.

13 Q They just pay --

14 A They pay a flat rate.

15 Q Excuse me if I misspeak. I almost said
16 play. They pay a flat fee?

17 A That's correct.

18 Q Regardless of how many subscribers and
19 their revenue?

20 A The smallest ones do. The others have a
21 progressive rate.

22 Q And I think the Panel may have heard some

1 testimony they're called Form 1 and Form 2 systems, am
2 I right?

3 A I don't know if your testimony was up to
4 date, in which case Form 1/Form 2's have been
5 collapsed into one form. So there is now only a
6 Form 1/2 and a Form 3.

7 Q Okay. And regardless of however many
8 channels they carry of broadcast, either superstations
9 or distant networks, their fee is going to be the
10 same?

11 A Fee is calculated strictly on the basis --
12 determined on the basis of their growth.

13 Q And do you know why, when copyright law
14 was instituted, that that approach was taken?

15 A I think it was intended largely to help
16 cable develop. This poor, little infant industry
17 needed to have some support.

18 Q Well, there is no sunset on the cable
19 copyright license now, is there?

20 A There isn't now, no.

21 Q Do you think there will be one?

22 A Well, we have fought them, and my

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1 organization in particular has sought to sunset the
2 compulsory license for at least 10 years.

3 Q Unsuccessfully so far?

4 A So far, unsuccessfully.

5 Q And these smaller cable operators that are
6 the Form 1/2 cable operators, it doesn't matter how
7 profitable they are or how successful they are, as
8 long as their revenues are below a certain amount,
9 they're going to pay this flat fee, no --

10 A As long as they --

11 Q -- matter what?

12 A As long as they report revenues below a
13 certain amount, they'll pay a flat fee. However, my
14 organization has been an enforcement group that
15 examines these things with quite care and results in
16 some substantial penalties.

17 Q And if someone misstates on their forms,
18 you take them to task for that, don't you?

19 A We surely do, if we can prove it.

20 Q You also talked about the pay and premium
21 services being much more expensive. So the Panel will
22 understand it, when we talk about premium services,

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1 they tend to be the movie services, like HBO and
2 Cinemax, am I right?

3 A Right.

4 Q And where you might see a basic channel,
5 as you showed in the a la cartes that might go -- if
6 it sold a la carte for \$1.95 maybe, the premium movie
7 services go for, what, \$8, \$9?

8 A Yeah, they go substantially higher.

9 Q And they're not really comparable. If
10 you're looking at paying premium services, you're not
11 saying that we should look to those prices to try and
12 set a price for --

13 A Yeah, that's why I don't believe in this
14 average per channel pricing.

15 Q Well, if you look at average prices of
16 similar channels, these broadcast basic and cable
17 basic channels, doesn't that give you a price per
18 channel that is something that is relevant to you?

19 A Then I would find that to be the case.

20 Q As far as the cable operator is concerned
21 as well, clearly, since he is paying -- would be
22 paying a percentage of the Form 3 operator on his

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1 revenues based on the sale of the service that has the
2 broadcast channels, he would not want to put a premium
3 or a pay service, or really that many other expensive
4 services, on that channel if he thinks he can sell
5 them separately?

6 A He certainly would not.

7 Q And that would also not just minimize his
8 cost, but it would seem to be fair that the
9 broadcasters and the people on those particular
10 channels that are being compensated by the compulsory
11 license get it based on the revenues for their kinds
12 of programs?

13 A Yeah, the cable system operators are very
14 fair.

15 Q I'll accept that.

16 I want to go now into your testimony, Mr.
17 Cooper --

18 A Sure.

19 Q -- that you filed, in particular on
20 page 2. When you had given a bit more of an
21 explanation about what happened in the '92 Arbitration
22 Panel, you talked about this average cable system

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1 cost. And you used some data that was publicly
2 available to make your determination?

3 A I used the data that were publicly
4 available for the years 1983 and '84.

5 Q And was that provided by Cable Data
6 Corporation?

7 A No. The data were in the Library of
8 Congress files. Cable Data Corporation did some
9 analysis and tabulation of those files, but the data
10 came from the cable systems.

11 Q The underlying data came from the cable
12 reports, and then CDC, as we call it, ran the numbers?
13 I mean, did the computer program to summarize
14 everything, is that right?

15 A I haven't heard Cable Data Corporation
16 referred to before as CDC.

17 Q Well --

18 A That's okay. I just understand that.

19 Q Well, you know Mr. Larson, I presume.

20 A I have known him for a few years.

21 Q We sometimes refer to him just as Larson,
22 the Larson data.

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1 A Okay.

2 Q And there was an average number of what
3 are called DSEs. That is a number that is very
4 necessary to extrapolate the average cable rate, am I
5 right?

6 A That's correct.

7 Q And that means distant signal equivalents?

8 A That's correct.

9 Q And distant signal equivalents, that term
10 is used to reflect the fact that cable operators do
11 not have to pay a royalty on their local signals that
12 they carry?

13 A That's correct.

14 Q And that's part of the 111 license, that
15 exemption, right?

16 A That's correct.

17 Q And that the distant signals are valued at
18 a 1.0 DSE?

19 A I --

20 Q A distant signal is one distant signal?

21 A That's right. Of course.

22 Q But a distant network signal is --

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1 A Is .25.

2 Q -- at a .25. And the same thing -- that
3 is for commercial networks as well as the public --

4 A The public broadcaster.

5 Q -- public broadcaster. And the theory
6 behind that was to -- well, would you explain what the
7 theory was?

8 A Yeah. The principal theory behind that
9 was that the network affiliates, that they carried
10 about three-fourths of the value of the program
11 services offered by a network affiliate retransmitted
12 by cable had already been -- the networks had already
13 been compensated for that carriage, for that exposure.

14 Q And the one-quarter was for the non-
15 network --

16 A That's correct.

17 Q -- component? You also mentioned that you
18 testified about the a la carte satellite carrier rates
19 in the prior proceeding.

20 A I did, sir.

21 Q And you had given the numbers of \$1.09 and
22 99 cents being the most common rate?

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1 A That's correct.

2 Q It's on page 3. Did the Panel accept your
3 testimony about the -- the prior Panel -- your
4 testimony about the a la carte rates as being relevant
5 to making a determination as to what the royalty rate
6 should be in their proceeding, if you recall?

7 A I'm trying to determine -- if the Panel
8 had fully accepted, the rates would have been much
9 higher than the ones that they finally ended up with.
10 So it's hard for me to say. But they accepted the
11 fact that these were -- that the testimony that was
12 presented was reasonably accurate.

13 Q Well, let me ask you to look at that
14 decision. I'll mark it as our next exhibit, 16X.

15 (Whereupon, the above-referred
16 to document was marked as
17 Exhibit No. SBCA 16-X for
18 identification.)

19 And you're free to look over the document.
20 I don't know if you've seen this Federal Register
21 version of it, but I'll represent to you that, if you
22 look at the first page, 19052, this is actually the

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1 action by the CRT accepting the Panel decision, and
2 then what follows is the Panel's decision. Do you
3 remember that process and the way of --

4 A Yes, I do.

5 Q And if you look to page 19058, six pages
6 down --

7 A Yes, I see that number.

8 Q In the middle paragraph, I'll represent to
9 you that there is a discussion of market value, and in
10 that middle paragraph there was some discussion of Dr.
11 Silberman. You worked with him in the prior
12 proceeding?

13 A I did not, but I know that I read his
14 testimony.

15 Q Well, they make a reference about Dr.
16 Silberman's second approach, supplemented by Mr.
17 Cooper. Do you see that? It's the last full
18 paragraph in that middle column?

19 A Yes, I see that.

20 Q "Without a more detailed examination of
21 the particular transmission and other operating costs
22 of satellite carriers, especially in relation to such

1 costs for cable operators, the Panel is unable to
2 assign the significance to be given the prices charged
3 to distributors or HSD users for various broadcast
4 signal packages. Does that refresh your recollection
5 of that?

6 A I'm just trying to identify what Dr.
7 Silberman's second approach was.

8 Q Well, if you look at the next -- and
9 you're free to go back up and read that, because I
10 want you to be sure, but it says, "Numbers ranging
11 from 67 through 99 cents to \$1.09," which sounds like
12 the numbers -- the 99 and the \$1.09 -- that you were
13 testifying to -- "per subscriber might be meaningful
14 in analyzing the satellite carriers industry ability
15 to absorb royalty rate increases, and to that extent
16 will be discussed below under one of the other
17 criteria.

18 "By themselves, however, these gross
19 revenue figures cannot speak persuasively to the point
20 of fair income to the satellite carrier as a user of
21 creative works." And there's a footnote.

22 Does that help you now?

1 A I find it complex here. I don't know
2 precisely what was meant here that it is supplemented
3 by Mr. Cooper, because Dr. Silberman I don't think
4 used any numbers. He asserted a 40-cent difference,
5 etcetera, etcetera. I don't know. I don't know what
6 this means as far as the second approach.

7 Q Well, why don't you turn back to
8 page 19057. Maybe this will help.

9 A Thank you.

10 Q I thought this explained it, but that
11 doesn't work for you.

12 A Well, here we have --

13 MR. LANE: Mr. Chairman, I'm going to
14 object to this line. Mr. Cooper has already indicated
15 he doesn't understand, doesn't remember. I mean, the
16 document speaks for itself. It's an opinion of this
17 Panel that can be cited in brief. We don't have to
18 waste time going through what Mr. Cooper thinks and
19 going back to prior portions to figure out if he
20 understands it correctly or not. Let counsel make
21 argument in briefs. Let's not waste our time.

22 MR. SEIVER: Your Honor, I just wanted to

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1 understand. This witness has testified in the exact
2 proceeding, type of proceeding we're in now, and has
3 given testimony that is repetitive. I want to at
4 least have him understand whether or not the Panel
5 accepted it.

6 And I'm on my last question.

7 CHAIRMAN GRIFFITH: The objection is
8 overruled. We think the witness testified in his
9 direct testimony that the prior Panel had accepted it.

10 MR. SEIVER: Thank you.

11 BY MR. SEIVER:

12 Q Is that what you --

13 A Yes. I have now read the second -- what
14 you have suggested to be the second --

15 Q Where you testified as to the \$1.09 and 99
16 being the most common rate. Do you see that?

17 A That's the third approach. Okay. The
18 last paragraph on page 19057 presents these numbers.

19 Q Right. But suffice it to say, and I want
20 to just wrap this up and we can argue about this in
21 the briefing, that those numbers that you testified
22 to, which I started out asking you about, they said

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1 that those figures cannot speak persuasively to the
2 point that their income to the satellite carriers --

3 A I didn't know whether he was referring
4 then to Dr. Silberman's testimony or mine.

5 Q But you did testify as to the 99 and
6 \$1.09?

7 A Exactly.

8 Q Okay. I'll move on.

9 You also had testified here, in more
10 detail I believe -- correct me if I'm wrong -- in the
11 prior proceeding as to the a la carte rate?

12 A Yes.

13 Q And you've gone through and done some
14 analysis. Do you understand the difference between a
15 satellite carrier and a program packager?

16 A Yes, I do.

17 Q And a satellite carrier is, for example,
18 the ones that are obligated to pay the royalty into
19 this office?

20 A That's correct. According to Section 119,
21 right.

22 Q And satellite carriers also package other

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1 programming that they do not uplink, others --

2 A Yes, of course.

3 Q -- the basic channels -- Arts and
4 Entertainment, Discovery, all of that, right?

5 A That's correct.

6 Q And then there is a group like Programmers
7 Warehouse that do not -- they are not satellite
8 carriers, they don't uplink programming, right?

9 A Correct.

10 Q And they are --

11 A They receive downlinks, though.

12 Q They receive -- well, do they receive
13 downlinks, or do the subscribers receive the
14 downlinks?

15 A Well, they have to be -- what they are
16 selling is the programming that is brought on the
17 downlinks.

18 Q What they actually do is turn the switch,
19 the on and off switch at the control center, to let
20 the subscribers get the downlink that is already
21 coming there?

22 A That's correct.

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1 Q And I want to focus on the significance of
2 that. If you object to my characterization of
3 significant that -- the cable networks already have an
4 uplink and a satellite and a path that goes to the
5 subscribers.

6 A Okay.

7 Q When a program packager such as
8 Programmers Warehouse or someone such as Superstar
9 wants to sell that programming, they have to go to
10 that particular packager -- I mean, to that particular
11 programmer and say, "You've got your signal already
12 coming down. I want to be able to put it in my
13 packages and turn it on and off at the control
14 center." Is that the way you understand it?

15 A Or have it turned on at the control
16 center.

17 Q They don't want to turn it off, obviously?

18 A That's right.

19 Q But the satellite carriers kind of switch
20 their hats and become more like the cable programmers
21 when people come to them and say, "Look, you've
22 uplinked WGN. We want to put that in our package.

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1 Can we have access to the control center and turn
2 WGN's signal on and off?" So now the satellite
3 carrier takes off their package or puts on their
4 satellite carrier hat and says, "Okay. I'll sell you
5 that. I'll let you have the right to turn that on and
6 off."

7 A I don't know about if the satellite
8 carrier is the one who does packaging.

9 Q You don't know? All of the materials that
10 you got from the --

11 A Well, those are distributor stuff
12 primarily.

13 Q Well, you had something from Netlink,
14 didn't you?

15 A Yes. That's the only exception I
16 mentioned in my early testimony, that Netlink was a
17 satellite carrier.

18 Q And also a packager?

19 A All of the rest of -- yes, and a packager.
20 And all of the rest of them were distributors only.

21 Q Well, you didn't look at Superstar
22 satellite packages?

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1 A No, I did not.

2 Q Do you understand whether they are a
3 carrier or not?

4 A I don't know.

5 Q You don't know.

6 A I can only testify to that which I have
7 looked at.

8 Q But suffice it to say that except for the
9 discussion of Netlink, and you didn't look at
10 Netlink's a la carte prices, your analysis of the
11 packages and a la cartes here are for the
12 distributors?

13 A I did look at Netlink's a la carte.

14 Q I said except for the Netlink, your
15 analysis was of the packagers, not of the carriers?

16 A Yeah. Netlink as a packager, not as a
17 satellite carrier.

18 Q And you did testify that the largest part
19 of -- I think you say provider program revenues are
20 attributable to package purchases, and to your
21 knowledge that would hold true for the satellite
22 carriers as well as these program packagers? I'm

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1 talking about people --

2 A You don't understand.

3 Q -- that sell the rights as opposed to that
4 actually physically do anything with a signal.

5 A That would be my understanding.

6 Q Now, you say undoubtedly this is due, in
7 part, to the fact that subscribing for packages
8 requires less effort and knowledge on the part of
9 subscribers. I presume that means that they can call
10 up and say, "Here is everything. Here is a price."

11 A Exactly.

12 Q Don't be like when you go into a Chinese
13 restaurant and you try to pick out everything that you
14 want and pay a different rate.

15 A You take the luncheon special.

16 Q And isn't it true that if someone wants a
17 30-channel package of programming, they'll say, "Well,
18 I know exactly what I want," that if they bought that
19 a la carte it would be a significant multiple of a
20 package that does contain them?

21 A I don't think the multiple would be that
22 much greater. It would be greater.

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1 Q And, in fact, what you did when you went
2 and looked at the a la carte prices for Programmers
3 Warehouse -- and I made the same mistake, too, so I --

4 A Okay.

5 Q I apologize.

6 A I thought I saw them both, as a matter of
7 fact.

8 Q You looked at two of their packages --
9 Prime Choice, remember, and Powerview -- and tried to
10 zero out the differences and said, "Well, what is the
11 real difference between these packages?" And you
12 concluded that that --

13 A About 10 percent.

14 Q About 10 percent. And you thought that
15 that's not significant?

16 A That's correct.

17 Q If the difference had been 50 percent,
18 would you then have thought that significant?

19 A Well, I would have thought that 50 percent
20 was beyond just being insignificant.

21 Q So 100 percent would clearly be --

22 A Yes, it would.

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1 Q That would be a problem.

2 I want to mark as our next exhibit --
3 well, first of all, I want to get to the source of
4 Table 5, so I will mark as Exhibit 17X -- I'll make
5 sure I get you a copy -- a two-page document.

6 (Whereupon, the above-referred
7 to document was marked as
8 Exhibit No. SBCA 17-X for
9 identification.)

10 Mr. Cooper, I have here a two-page
11 document that says "Programmers Warehouse" on it. And
12 I'll represent to you, and Mr. Lane will correct me if
13 I'm wrong, this was provided in discovery, and I
14 believe this is one of the documents that you would
15 have used in creating your Table 1. Am I right?

16 A That's correct. Table --

17 Q Table 1 on page 5.

18 A Okay. That's fine.

19 Q And if you look at it, you can see where
20 Prime Choice is in that bottom right -- I guess this
21 is supposed to be -- look like movie film. Is that
22 it? The little rectangular boxes? First page.

1 That's where the packages are. This is the document
2 you recall --

3 A That's a package, right.

4 Q Where you got the information on Prime
5 Choice and on Powerview, which is just to the left of
6 that a little bit?

7 A Right.

8 Q And the second page of this document, the
9 left-hand column, lists all of the premium and basic
10 services?

11 A On an a la carte basis.

12 Q With the a la carte, both annual, six
13 months, quarterly, and then the last column is the
14 monthly column.

15 A Right.

16 Q And you used that last column, the monthly
17 column, to determine the numbers that are the
18 parentheticals?

19 A That's correct.

20 Q And you used the monthly package price for
21 these two services to determine what --

22 A That's correct.

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1 Q -- the package prices were for purposes of
2 your calculation.

3 Now, did you -- this looks like a rather
4 detailed analysis that you did. Did you just do
5 Powerview and Prime Choice and say, "Well, I've done
6 enough"? Or did you look at comparisons of others?

7 A I only did those two of the packages.

8 Q And without looking at the others, you
9 decided, well, there is only an 11 percent difference,
10 so a la carte prices are meaningful?

11 A I just looked at those two packages, which
12 I did not -- I thought that they indicated the
13 extremes of the -- Powerview was the cheapest one,
14 only \$18.95 a month, and Prime Choice was the most
15 expensive one, or the other way around, whichever.

16 Q Well, let's look at an exhibit, which I
17 will mark as 18X. I left a blank on it not knowing
18 what it was going to be.

19 (Whereupon, the above-referred
20 to document was marked as
21 Exhibit No. SBCA 18-X for
22 identification.)

1 This is not one that you've seen before,
2 because --

3 MR. LANE: Well, I'm going to object to at
4 least the title of this exhibit, to start, because it
5 says "Alternate Table 1, Allen Cooper," which implies
6 that he did this, and he just stated he did not do
7 anything remotely approaching this.

8 MR. SEIVER: I just -- the only reason I
9 put it there was to identify that it was during his
10 examination. That's why I put "Satellite Carriers" --

11 MR. LANE: He has not identified any other
12 cross examination exhibit as during somebody's
13 examination, and it is certainly --

14 MR. SEIVER: I apologize.

15 MR. LANE: -- prejudicial to suggest when
16 the witness just stated he did not --

17 MR. SEIVER: I will cross it out, and
18 perhaps at the end of this examination, if we have a
19 different approach, I will --

20 CHAIRMAN GRIFFITH: You're crossing out
21 "Alternate" --

22 MR. SEIVER: No. Just "Allen Cooper,"

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1 Your Honor.

2 CHAIRMAN GRIFFITH: All right.

3 MR. LANE: No, we're crossing out the
4 entire thing, because it is not alternate Table 1,
5 unless they want to have a witness who has some other
6 Table 1. This is not Mr. Cooper's Table 1
7 alternative. He did not have an alternative.

8 CHAIRMAN GRIFFITH: Cross out the whole
9 thing, Mr. Seiver.

10 MR. SEIVER: Okay.

11 CHAIRMAN GRIFFITH: "Alternate Table 1,
12 Allen Cooper" is crossed out.

13 MR. SEIVER: Thank you, sir. I have no
14 problem with that.

15 BY MR. SEIVER:

16 Q Well, Mr. Cooper, I want to look at
17 this --

18 CHAIRMAN GRIFFITH: Alternative? That's
19 why I'm having difficulty.

20 MR. SEIVER: Sorry?

21 CHAIRMAN GRIFFITH: It's "alternative."

22 BY MR. SEIVER:

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1 Q I don't know if you have -- if you need
2 the calculator, I have one here, and I'll represent to
3 you that it is not fixed.

4 What I did is decide to look at a couple
5 of the other Programmers Warehouse --

6 MR. LANE: Well, I'm going to object to
7 this line of questioning, because what is going to
8 happen is he is going to ask Mr. Cooper to verify that
9 this exhibit is correct. This is not our exhibit. It
10 is not in Mr. Cooper's testimony. He just testified
11 he did not analyze these things. This is something
12 that if Mr. Seiver wants to put in, he can put in in
13 rebuttal or somehow through a witness of his own, not
14 through our witness.

15 MR. SEIVER: He just testified that, you
16 know, he has made a conclusion that 11.3 percent is a
17 relevant number to show a difference in a la carte
18 pricing, and he only compared those two packages. I
19 created this exhibit to make it easier to cross
20 examine him to compare the Prime Choice and
21 Cablebuster packages, and also the total basic
22 package.

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1 I wanted to be able to go through, without
2 having to have the problems of writing and what not,
3 to speed it up. If this exhibit gets thrown out,
4 that's fine. But I want Mr. Cooper to be able to
5 testify as to what these differentials are, since it
6 is absolutely relevant to his conclusion about the
7 11.3 percent.

8 CHAIRMAN GRIFFITH: All right.

9 MR. LANE: This is totally irrelevant
10 because he testified he only addressed two things.
11 They are clearly identified in the testimony. He said
12 he didn't look at anything else, so this is an
13 entirely different analysis.

14 CHAIRMAN GRIFFITH: I can appreciate Mr.
15 Lane's objection, and his position with respect to the
16 fact that perhaps this is something which should be
17 offered as part of Mr. Seiver's direct case or direct
18 testimony. However, the motion is overruled, and
19 we're going to let you proceed at this point.

20 MR. SEIVER: Thank you very much.

21 CHAIRMAN GRIFFITH: Yes.

22 BY MR. SEIVER:

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1 Q Mr. Cooper, if you would look at this
2 exhibit, and I have said it's Programmers Warehouse a
3 la carte comparison, and I've used the Cablebuster
4 price of \$16.95, and the Prime Choice monthly price of
5 \$12.95. Do you see that?

6 A Yes.

7 Q And do you see also -- and check if it --
8 and, in fact, maybe we might need a break if you need
9 more time. I attempted to do what you did with your
10 Table 1 and add up the a la carte prices for the
11 channels on Cablebuster that are beyond those that are
12 in Prime Choice, and came up with a dollar figure of
13 \$6.59 for a la carte, a \$4 program package price
14 differential for a \$2.59 --

15 A I can't understand, Mr. Seiver. First of
16 all, you should correct -- WNOR should be WWOR.

17 Q I'm sorry.

18 A And then the highest priced unit you have
19 under this Cablebuster, which should be one word
20 rather than two, but even that aside, if I go to the
21 Prime Choice, why can't I find the golf channel there?

22 Q When you say -- the golf channel within

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1 Cablebuster or on the a la carte?

2 A Within Prime Choice, because you say
3 the --

4 Q No. That means it's not in Prime Choice.
5 That's what I was doing. Cablebuster has these 1, 2,
6 3, 4, 5 additional --

7 MR. LANE: Mr. Chairman, I'm going to
8 renew my objection, because we're seeing now exactly
9 what I said would happen. Mr. Seiver is going to have
10 to testify what is really meant by this exhibit, which
11 Mr. Cooper has never seen before, did not testify he
12 used, hasn't looked at. So we're going to go through
13 Mr. Seiver, and then either the witness either being
14 forced to agree with it and -- it's just going to be
15 a terrible state of the record.

16 MR. SEIVER: Well, I can address that. If
17 the Panel does not want to hear me testify, I would
18 like to take a recess to let the witness to do the
19 Cablebuster/Prime Choice comparison, as well as the
20 total basic Prime Choice comparison, and also the
21 total basic a la carte total price. And once he has
22 done that, then I will have what I consider to be --

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1 MR. LANE: Once he has done that, he has
2 made Mr. Seiver's exhibit, when Mr. Seiver can put
3 this in through his own witness and that's the way it
4 should be done, Mr. Chairman. I rest.

5 MR. SEIVER: Our direct cases were filed
6 simultaneously. I had no opportunity --

7 MR. LANE: That's what rebuttal is for,
8 Mr. Chairman.

9 JUDGE GULIN: Can I ask Mr. Cooper, would
10 you be able to do that kind of analysis that Mr.
11 Seiver has asked you to do in a reasonable period of
12 time?

13 THE WITNESS: I could check his data here.
14 I have never seen this table before, obviously.

15 JUDGE GULIN: I guess what I'm asking is,
16 could you create your own table within a short period
17 of time? Or is that something that is --

18 THE WITNESS: I believe I might be able
19 to. It depends upon, again, whether all of the
20 channels on those two -- Cablebuster and Prime Choice
21 that are listed here -- and the a la carte pricing on
22 page 2. I haven't checked that.

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1 JUDGE GULIN: You could check that,
2 though.

3 MR. SEIVER: But --

4 JUDGE GULIN: All right. Just a moment.

5 CHAIRMAN GRIFFITH: Mr. Seiver, is this
6 the only one of these that you have?

7 (Laughter.)

8 That's the first question.

9 MR. SEIVER: Your Honor, I tried to do it
10 to the next one and I said, "If I could" -- I'd wear
11 out my welcome.

12 CHAIRMAN GRIFFITH: All right.

13 MR. SEIVER: This is the only one.

14 CHAIRMAN GRIFFITH: How long do you think
15 it would take you to do this?

16 THE WITNESS: Oh, probably a half hour.

17 CHAIRMAN GRIFFITH: The objection is
18 sustained.

19 MR. SEIVER: Might I inquire if, then, I
20 -- if I could ask the witness any questions about this
21 exhibit at all now.

22 CHAIRMAN GRIFFITH: It's difficult to rule

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1 on that without hearing what the question is, Mr.
2 Seiver. I think the point that perhaps you should
3 know is the fact that at least it's my opinion, which
4 I've shared with my colleagues, that this more
5 appropriately should be included in your direct case,
6 and if not there certainly in your rebuttal case.

7 MR. SEIVER: Well, I had intended to --

8 CHAIRMAN GRIFFITH: And then the Panel
9 would have the information which you seek to bring in
10 through this witness.

11 MR. SEIVER: I understand. All I did want
12 him to do was to do his same Table 1 comparison for
13 the others to impeach his conclusion that -- of the
14 11.3 percent. And I felt that this was the best way
15 to impeach it, rather than wait for a month and then
16 come in just with one witness on this issue.

17 JUDGE GULIN: Mr. Seiver, if I may say, I
18 don't think that any of us feel that this is improper
19 cross examination. It's totally proper cross
20 examination. Just as a matter of efficiency, we would
21 prefer that you do it in your rebuttal case or in your
22 direct case, rather than take a half an hour for him

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1 to create a new table. I think that accurately
2 reflects the Panel's view.

3 CHAIRMAN GRIFFITH: We might have to --

4 JUDGE GULIN: I stand corrected.

5 CHAIRMAN GRIFFITH: The Panel is two to
6 one on what he just said.

7 (Laughter.)

8 I haven't lost. Go ahead.

9 (Laughter.)

10 MR. SEIVER: Very well. Let's not spend
11 any more time with that.

12 BY MR. SEIVER:

13 Q I believe, though, you had testified that
14 if we had evidence which shows that a la carte
15 variations were greater than the 11.3 percent, then
16 the relative value would not really make sense for a
17 comparison. Just to --

18 A First, let me again correct my -- correct
19 you, because I corrected my testimony. The difference
20 is not 11.3, but 10.3.

21 Q I'm sorry. 10.3 percent.

22 A And I felt -- and I do agree that if the

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1 variation between the a la carte and the package
2 prices was very large, then the a la carte price would
3 not be --

4 Q And just so the record is clear, and then
5 I'll move on, that the comparison can be done, the
6 recreation of your Table 1 can be done for any of the
7 packages on here if all of the services are listed in
8 the second page a la carte?

9 A There's also an assumption, Mr. Seiver,
10 and it's a very difficult one for me, that not all
11 channels would have equal reception or equal
12 purchasing, as either on an a la carte or a package
13 basis. For example, one of the examples is the gospel
14 channel, for which the rate is \$2.50, the same as for
15 golf. And I think that that reflects the fact that
16 there are very few buyers, very few subscribers who
17 want those channels, and, therefore, the price for
18 those will go up higher.

19 It's a complex situation. But I just saw
20 the golf channel, which so obviously distorts the --
21 what you had attempted to present before, that it
22 makes an assumption that the golf channel would be --

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1 is an equivalent of the other channels on the service.

2 Q Well, I guess --

3 A But I'll leave that alone.

4 MR. SEIVER: I guess I got myself into
5 that hole of not wanting to get the exhibit, and now
6 I've got the witness' comments on that exhibit.

7 Well, I'll renew my request, if we do have
8 a break, that at some point that I -- indulgence on
9 this, if the witness can do it in less than a half an
10 hour.

11 BY MR. SEIVER:

12 Q Determining an average price per channel,
13 that was a much easier task for you, I presume?

14 A That's correct.

15 Q And do you remember looking at the One
16 Stop and the Top Stop there on page 7?

17 A Yes.

18 Q And when you looked at expanded and
19 absolute, I believe you testified that included at
20 least one and -- maybe for absolute, maybe four
21 premiums?

22 A That's correct.

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1 Q So that skewed the average price per
2 channel?

3 A Absolutely.

4 Q But if you had maintained just a basic
5 service price per channel of expanded, basic --

6 A Yes.

7 Q -- as far as premiums, in much the same
8 way that the package that Programmers Warehouse had no
9 premiums, you could come up with a price per channel,
10 couldn't you?

11 A Yes, I could.

12 Q And at least for One Stop, which do you
13 recall that that has no premiums?

14 A That's correct.

15 Q It is --

16 A I don't recall, but I assume that it had
17 no premiums with this total price.

18 Q At the 45 cents per channel.

19 And if, in fact, your conclusion on the
20 next page about the fluctuation in package pricing is
21 due to the inclusion of premiums, then you would have
22 less of a fluctuation and perhaps you would be more

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1 accepting of a per program package price?

2 A Perhaps I would.

3 Q Now, in your survey of a la carte prices,
4 which begins on the next page, you had talked about
5 whether, you know, if cable charges more -- I mean,
6 I'm sorry -- you talked about a la carte prices and --

7 MR. LANE: Excuse me. What do you mean by
8 "the next page"?

9 MR. SEIVER: Page 8. I'm sorry. I'm
10 still -- I was on page 8 still.

11 BY MR. SEIVER:

12 Q You talk about a la carte prices charged
13 by different providers for broadcast signals, and I
14 think we talked about, in the cable market, had you
15 talked -- I don't recall if you testified -- had we
16 talked about whether cable operators sell broadcast
17 signals a la carte?

18 A The answer is, yes, they do.

19 Q And do you know if that issue has been an
20 item of dispute among the copyright owners and the
21 copyright users as to how that works in the copyright
22 royalty payment?

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1 A I don't consider that to have been a
2 subject that I was involved with in terms of a
3 dispute.

4 Q Had you looked at, when you were doing
5 your survey, what cable operators' a la carte prices
6 are for broadcast channels, when you were doing this
7 testimony?

8 A No, I did not.

9 Q So you don't know if they sell broadcast
10 signals --

11 A No, I know that -- I know that the
12 packages -- that cable subscribers have an option in
13 terms of certain channels that they can take or not
14 take and pay an extra fee for them.

15 Q But as far as the broadcast channels are
16 concerned that are sold a la carte -- let me finish
17 the question -- you don't know if cable is charging a
18 multiple of five or 10 or one or two of the license
19 fee that they pay?

20 A I don't know that. They just have
21 separate prices for stations like PBS or GN or what
22 have you.

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1 Q And as far as you understand, cable and
2 satellite and MMDS are all competitors for basically
3 the same subscribers?

4 A They are.

5 Q And am I right that, with the exception of
6 the satellite carriers, other multi-channel video
7 program providers are eligible to sell -- are eligible
8 for treatment under the 111 copyright license?

9 A Except for the TVRO satellite people.

10 Q Yes, we used TVRO yesterday. Except
11 for --

12 A Satellite.

13 Q -- satellite carriers. And that's both
14 the home dish c-band, as well as the smaller dish --

15 A Ku-band.

16 Q -- Ku band.

17 Now, I've gone through these a la carte
18 prices and packages, and I note that you only included
19 them for c-band packages. Am I right?

20 A Yes. I did not, at that time, have data
21 with respect to the DBS type of --

22 Q Last summer, there was no data for --

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1 A No. I didn't have prices -- there is no
2 a la carte, as far as I can tell, with respect to the
3 DBS, the direct broadcast from satellite. It's a
4 package.

5 Q Do you find that significant, as far as
6 your analysis today that we cannot look at an a la
7 carte price for satellite subscribers?

8 A I couldn't find any, so I couldn't use
9 any.

10 Q So as far as your testimony is concerned,
11 it really is only relevant to c-band?

12 A That's correct, at this time. C-band Ku.
13 There is also a Ku-band. Both satellite.

14 Q The satellite. But that's the high power
15 or medium power?

16 A I think it's medium power. You can also
17 receive --

18 Q There is one --

19 A It's a home receiver -- home receiver --
20 a Ku-band.

21 Q And that's one operator? That's Prime
22 Star?

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1 A That is correct.

2 Q You didn't look at Prime Star's prices?

3 A I didn't look at anyone's pricing. In
4 terms of the Prime Star -- I may have -- it depended
5 upon what I was able to obtain from the Nashville
6 trip.

7 Q But you never looked at it for purposes --
8 or included it in this --

9 A No, I did not.

10 Q -- particular testimony?

11 A I did not. Dealing primarily with c-band.

12 Q And so, as we can establish it now, you
13 don't believe the DBS operators offer a la carte?

14 A That's correct.

15 Q And you didn't include the analysis of the
16 medium power Prime Star service in this testimony?

17 A That's correct.

18 Q And did I -- and we've already determined
19 that you do not know how many people do buy, at least
20 on c-band, a la carte broadcast signals?

21 A I do not know.

22 Q And if you were to learn that the number

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1 of consumers buying a la carte was low -- and I don't
2 know what number you would have a threshold -- would
3 you change your conclusion as to the relevance of a la
4 carte?

5 A Well, I think that -- I think that it
6 still indicates the value of that channel, as
7 determined by the distributor and by consumers. I
8 mean --

9 Q Have you made any effort to determine
10 whether or not a la carte pricing may be more
11 arbitrary than not?

12 A I don't know. Why would it be arbitrary?

13 Q Well, for instance, you made an
14 observation about the pricing of the golf channel.

15 A But that wasn't an arbitrary thing at all.
16 I gave -- I tried to explain that the cost for
17 distributing and producing and transmitting the golf
18 channel to a very small number of subscribers could be
19 much larger than the cost per subscriber for
20 distributing something which is very popular.

21 Q Cost to whom?

22 A The cost would be the cost to the

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1 satellite carrier.

2 Q Or distributor of the --

3 A Yes.

4 Q And in that sense, the a la carte pricing
5 could reflect low volume?

6 A That's correct.

7 Q Now, why would it matter whether the
8 volume is high or low to set an a la carte price?

9 A It's an effort to recover the costs that
10 are involved in distributing the signal.

11 Q Is that because the costs are fixed?

12 A I didn't say the costs were fixed. The
13 costs are determinable. The costs are easily known to
14 the person who is bringing this package of programs
15 together.

16 Q But your analysis or assumption about the
17 \$2.50 price for golf and -- I forgot the other
18 channel.

19 A The gospel channel.

20 Q The gospel channel -- indicates there may
21 be some relationship between a la carte pricing and
22 another factor besides what the license fee happens to

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1 be?

2 A Well, I think that the principal fact that
3 I'm dealing with is that the lower prices reflect
4 greater interest on the part of subscribers.

5 Q Do you know what golf channel's license
6 fee is?

7 A I have no -- yes. Licensee fee, I don't
8 know what --

9 Q You didn't include that when you did your
10 Table 5 on page 12 of reported license fees?

11 A I may not have had that figure available,
12 or it was not one that I --

13 Q And you didn't do it for gospel either?

14 A No.

15 Q Your conclusion, or your last sentence on
16 page 11, after you've looked at a la carte for Turner
17 Vision --

18 A All right.

19 Q -- you say, "These data clearly
20 demonstrate that the a la carte rates for satellite-
21 distributed broadcast signals were consistently
22 several multiples higher than the six cents to 17-1/2

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1 cents per month royalty fees established" --

2 A That's correct.

3 Q -- "in 1992." As far as what the a la
4 carte rates are, though, you don't have any knowledge
5 on these particular services that are listed in
6 Table 4 whether they're all very popular or one is
7 more popular than the other. You didn't make any
8 assessment of popularity?

9 A I did not.

10 Q And you did not make any analysis when you
11 went through this whether Turner Vision itself was
12 either a carrier or a distributor. You just said this
13 is what this particular entity is selling -- for
14 instance, WTBS or the --

15 A What table are you talking about now?

16 Q I'm talking about Turner Vision on
17 page 11.

18 A Okay. I was on page 12.

19 Q Sorry. On page 11, you did not make any
20 analysis whether --

21 A No. It's just the prices that were on
22 their rate card.

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1 Q And you also had made a conclusion -- and
2 I believe you said this -- that distributors charge
3 more for a broadcast channel than for a non-broadcast
4 channel, and I believe that's --

5 A It's several pages to show that.

6 Q -- 12 to 13. Now, when you made that
7 conclusion, again, it was based on this a la carte
8 pricing, am I right?

9 A Yes, it had to be.

10 Q And similar to the broadcast channels, for
11 the non-broadcast you don't have any data as to
12 whether one or five or 5,000, or however many people
13 paid a la carte rates for any of the cable network
14 programming, the non-broadcast?

15 A The volume of people. That's correct.

16 Q Yes. And do you know whether, for the
17 non-broadcast programming as well that you list in
18 Table 4 -- and again, I believe it's identical to what
19 you list in Table 5 -- whether other factors could
20 have influenced the distributor or packager to set an
21 a la carte rate at any level?

22 A That's true.

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1 MR. LANE: Excuse me. Table 4 and Table 5
2 speak to totally different things, so you may have --

3 MR. SEIVER: I believe I asked for the
4 listing -- the services that are listed for the --

5 MR. LANE: Table 5 does not have any a la
6 carte pricing.

7 MR. SEIVER: I was just referring to the
8 services, Mr. Lane.

9 BY MR. SEIVER:

10 Q Now you had earlier said that you didn't
11 think it was fair to look at an average package price.

12 A Average per channel price.

13 Q But for whatever it is for your averages
14 here in Table 4 and Table 5, you have averaged what
15 the prices are for broadcast and non-broadcast
16 channels?

17 A You need to --

18 Q As well as license fees; you've averaged
19 those?

20 A That's on Table 5.

21 Q Right.

22 A But we're dealing with a totally different

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1 animal here. It has nothing to do with the average
2 per channel price.

3 I was merely testifying that dividing the
4 total channel price -- package price by the number of
5 channels can be very misleading because it depends
6 largely on, as you have pointed out, on how many
7 premium pay channels there are in that.

8 Q Now Mr. Cooper, you also state at the end
9 of page 13 that significantly higher license fees for
10 non-broadcast channels whose monthly subscriber rates
11 were comparable to those of broadcast signals suggests
12 strongly that royalty fees could be increased
13 substantially with minimal, if any, impact on à la
14 carte or packaged prices.

15 Now, I just want to make sure I
16 understand. I thought your analysis had been impact
17 on à la carte prices and not on -- where did you have
18 analysis of package prices with respect to license
19 fees?

20 A Well, I know the license fees that are
21 shown here, average license fees, for both à la carte
22 and packages, those are the fees paid for both.

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1 Q But you never made an analysis of what the
2 average package price or the average fee would be to
3 say that if it increases a certain amount, that
4 package is still affordable?

5 A I'm just reviewing the kind of data that
6 I have. The major point, Mr. Seiver, is that I
7 started out with the demonstration that the à la carte
8 prices were -- were not too different from the prices
9 per channel in the packages.

10 Q And you're not testifying today for the
11 Program Suppliers as to what the license fees should
12 be for the broadcast signals?

13 A No, we are not. I am not.

14 Q And are you -- is any of your testimony or
15 your purpose of your testimony today to urge or
16 discourage any pricing with respect to the syndex
17 component that was the '92 panel?

18 A The syndex component is bad history.

19 Q What do you mean by that?

20 A We should not have pushed for end to
21 syndex.

22 Q I'm sorry, an end to syndex?

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1 A Yes.

2 Q What do you mean?

3 A I thought that -- I'm getting myself
4 involved. I thought that our decision to support a
5 breach of syndex was a bad decision. That's my
6 personal opinion.

7 Q I didn't understand the words. You said
8 your decision to support what?

9 A To support the elimination of the syndex
10 surcharge, for example, was a bad decision.

11 Q But there is a syndex surcharge currently
12 under 119.

13 A There is not. In the 119?

14 Q Yes, that's what I'm talking about.

15 A Okay, 119's a different story. I'm sorry.

16 Q Under 111, syndex has pretty much
17 disappeared?

18 A Gone, right.

19 Q Now are you familiar with testimony of Mr.
20 Valente about the value of syndex generally?

21 A Yes.

22 Q We quoted him yesterday to Ms. Kessler, "a

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1 slender piece of worthlessness."

2 Have you ever heard that expression?

3 A It sounds like something you learned from
4 me.

5 Q Something we learned from you?

6 (Laughter.)

7 So you agree that syndex --

8 A I sure do.

9 Q -- is a slender piece of worthlessness?
10 Just one moment.

11 MR. SEIVER: Your Honors, that concludes
12 my cross examination of Mr. Cooper.

13 CHAIRMAN GRIFFITH: Any other cross
14 examination?

15 Mr. Garrett?

16 THE WITNESS: Thank you.

17 MR. LANE: Mr. Chairman, since we started
18 at 9:30, I think this is the longest any witness has
19 gone without a break.

20 CHAIRMAN GRIFFITH: All right, do you want
21 a brief recess?

22 MR. LANE: Yes, I think that would be

1 appropriate.

2 CHAIRMAN GRIFFITH: All right, we'll take
3 a brief recess at this time. About ten, 12 minutes.

4 (Whereupon, the foregoing matter went off
5 the record at 11:11 a.m. and went back on
6 the record at 11:28 a.m.)

7 MS. BEHAN: Your Honor, Kathleen Behan of
8 the Joint Sports Claimants.

9 We have a preliminary scheduling issue
10 that I think needs to be resolved. The situation is
11 this: we have Dr. Crandall here with us, and we had
12 expected that we might be able to try to get him on at
13 the end of the day today.

14 But I now understand it appears that it's
15 going to take all day to handle PBS's witness, or so
16 you believe that that's the case, right?

17 MR. SEIVER: Well, that was the way it was
18 presented to us if he goes on at the end of the day
19 versus now.

20 MR. GLIST: The schedule that we had
21 worked out with --

22 MR. LANE: Ms. Woods, our hero for

1 scheduling.

2 (Laughter.)

3 MR. GLIST: -- was that we would do both
4 Mr. Crandall and Mr. Sternfeld tomorrow, and that is
5 how we have arranged our preparation time. We are
6 prepared for two witnesses. We can't tell you whether
7 it will be 4:00, 5:00, or 6:00 when we're done with
8 them.

9 But we were not under the understanding
10 that Mr. Crandall would be presented for cross
11 examination today.

12 MS. BEHAN: That's not my understanding.
13 I mean, Ms. Woods can speak to it better than me. She
14 has more expertise in this.

15 But what I'll say first of all is I
16 understand the problem is that Dr. Crandall cannot
17 testify tomorrow afternoon and Dr. Sternfeld can't
18 testify after 4:00 because they both have other
19 obligations.

20 To resolve the matter, what I can offer up
21 is that Dr. Crandall can go on next Tuesday morning
22 before our last witness, Dr. Gerbrandt. And then if

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1 we have to go on the 26th, we're fine with that, Dr.
2 Crandall is, Dr. Gerbrandt it -- he's fine with going
3 Tuesday.

4 But we're going -- he's simply not
5 available tomorrow after 12:00, and I think that they
6 have anticipated more than four hours for Sternfeld.
7 So we have what I see as an unresolvable conflict
8 unless he goes today late or next Tuesday.

9 CHAIRMAN GRIFFITH: What we agreed on --
10 what was proffered yesterday was that Mr. Cooper and
11 Mr. Wilson would testify today and that Dr. Crandall
12 would testify tomorrow.

13 MR. OSSOLA: Your Honor, the problem with
14 Mr. Sternfeld is that he is coming in from the west
15 coast. It's not just a scheduling -- he's flying in
16 tonight and he's available all day tomorrow. But he's
17 also going back to the west coast.

18 So I think the concern is to try to -- if
19 that's the plan, to do those two witnesses tomorrow,
20 the concern is whether it's possible to do --

21 CHAIRMAN GRIFFITH: We've got to have Dr.
22 Crandall -- what time tomorrow is he available?

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1 MS. BEHAN: He's available in the morning
2 until noon, 12:00 noon. He's not available the rest
3 of the day.

4 CHAIRMAN GRIFFITH: Would it be possible
5 to get Dr. Crandall's direct testimony today and his
6 cross examination tomorrow morning?

7 MR. GLIST: We could do that, Your Honor.

8 CHAIRMAN GRIFFITH: Why don't we plan on
9 doing that.

10 All right, Mr. Garrett?

11 CROSS EXAMINATION

12 BY MR. GARRETT:

13 Q Mr. Cooper, I'm Bob Garrett and I
14 represent the Joint Sports Claimants. Good morning.

15 A Good morning.

16 Q We meet again.

17 A This time on the same side.

18 Q Please remember that during --

19 (Laughter.)

20 We both need to get a life, Allen.

21 Mr. Cooper, you had discussed the
22 derivation of the royalty rates in the original 1988

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1 Satellite Home Viewer Act. Do you recall that?

2 A Yes.

3 Q Okay, and those rates were the 12 cents
4 per subscriber per month for super stations and three
5 cents per subscriber per month for network stations,
6 correct?

7 A They were 12 cents for independent
8 stations.

9 Q Okay, and independent --

10 A Including all the -- and then dealing with
11 satellite, they were for super stations.

12 Q All right, a super station is an
13 independent station, correct?

14 A Yes, super station is an independent
15 station.

16 Q And you testified that you had derived
17 those numbers by looking at what cable operators were
18 paying under the Section 111 compulsory license, is
19 that correct?

20 A That's correct.

21 Q And the 1988 act was supposed to sunset in
22 1994, correct?

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1 A That's correct.

2 Q By sunset, it meant that after 1994, we
3 would all be in a free marketplace negotiating
4 satellite carriers, correct?

5 A That's correct.

6 Q Okay, and so the rates that were derived
7 for that original 1988 act were rates that would apply
8 only until we moved to a free marketplace, correct?

9 A That's correct.

10 Q Now and, in fact, there was a provision
11 also for adjustment of those rates in the proceeding
12 that you testified about earlier, correct?

13 A That's correct.

14 Q Okay. Now the '88 act did not sunset --
15 or I should say the Section 119 compulsory license did
16 not sunset, did it?

17 A No, it did not.

18 Q All right. And the compulsory license for
19 satellite carriers was extended through the year 1999,
20 correct?

21 A That's correct.

22 Q And that's why we are here today, correct?

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1 A That's correct.

2 Q Now am I also correct that the royalty
3 rates that you've calculated for purpose of the 1988
4 act were based on what Form 3 cable operators were
5 paying at some point in 1983 or 1984?

6 A That's right, only Form 3's.

7 Q All right, and just -- we've heard that
8 term, and just so that we're clear, a Form 3 cable
9 operator is a cable operator who has --

10 MR. SEIVER: I'll get them.

11 MR. GARRETT: I don't share Ms. Kessler's
12 --

13 MR. SEIVER: Just because he's paranoid
14 doesn't mean somebody's looking over his shoulder.

15 (Laughter.)

16 BY MR. GARRETT:

17 Q Form 3 cable operators are cable operators
18 who have more than \$292,000 in semi-annual gross
19 receipts from the basic service providing secondary
20 transmissions, is that correct?

21 A Right.

22 Q Now and Form 1 and 2 cable operators are

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1 cable operators who have --

2 A Less than.

3 Q -- less than \$292,000 in gross receipts
4 from that base service.

5 A Semi-annual.

6 Q Semi-annual, correct.

7 A Right.

8 Q And you derived that rate for the original
9 1988 act -- you looked solely at those cable operators
10 who had these gross receipts in excess of the \$292,000
11 in semi-annual gross receipts?

12 A That's correct. And the reason for that
13 is the fact that only those Form 3 systems segregated
14 the -- identify distant signals from non-distant
15 signals and local signals.

16 Q Okay. And what you calculated in that
17 1988 act that we referred to before as the average
18 cable cost, correct?

19 A That's correct.

20 Q And it was actually the average cost paid
21 by a Form 3 cable system, correct?

22 A That's correct.

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1 Q And in the 1992 proceeding that you
2 testified, there was an issue as to whether or not one
3 looked at the royalties paid by Form 1 and 2 systems
4 in addition to Form 3 systems?

5 A That's correct.

6 Q And you have a copy of SBCA Exhibit 16-X
7 before you which is the 1992 decision. Let me ask you
8 to turn to page 19055.

9 A I have it.

10 Q Okay, and let me direct your attention to
11 the middle column, Mr. Cooper.

12 A All right.

13 Q And you see the second full paragraph
14 there?

15 A The panel concludes?

16 Q Yes, could you read that first sentence?

17 A "The Panel concludes that the Form 3 data
18 is the appropriate basis for calculating average cable
19 cost."

20 Q Okay, and so is it fair to say that the
21 Panel accepted your testimony in that case --

22 A Yes, sir.

1 Q Let me finish the question, Allen.

2 Is it fair to say that the Panel accepted
3 your testimony in the 1992 proceeding that the
4 appropriate way of determining average cable cost was
5 by looking at Form 3 cable systems?

6 A Yes, sir.

7 Q Okay. And if we go down to the -- in that
8 same paragraph on page 19055, we see that the Panel
9 gives its rationale for accepting that only Form 3
10 data should be used for calculating average cable
11 cost?

12 A Yes, sir; I do see that.

13 Q All right, and in particular, do you see
14 they say, "We further agree that the satellite
15 carriers have revenues which would place them in the
16 Form 3 category" -- do you see that?

17 A Yes, sir.

18 Q And you had testified in the '92
19 proceeding, did you not, that satellite carriers had
20 revenues that exceeded that \$292,000 semi-annually?

21 A Yes, sir.

22 Q Okay. And the same would be true of the

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1 satellite carriers today, would it not, that they
2 would all be in the category of Form 3 --

3 MR. SEIVER: Objection; going beyond the
4 scope of direct.

5 My -- it was historical witness testimony,
6 and I don't think Mr. Cooper said anything about that
7 and it's going way beyond.

8 CHAIRMAN GRIFFITH: Want to respond, Mr.
9 Garrett?

10 MR. GARRETT: Well, I hadn't finished my
11 question, but assuming that the question was clear --
12 again, this is an area that Mr. Seiver had cross
13 examined the witness on here.

14 I wouldn't be here but for the testimony
15 that he has elicited already on his examination here.
16 There was a lot of discussion about the derivation of
17 the rate, the 12 cent and the three cent rate. There
18 was discussion about how that applied to satellite
19 carriers, to cable operators.

20 And I'm simply exploring that in further
21 depth.

22 MR. SEIVER: I had only talked to Mr.

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1 Cooper about distributors, and I never put him in the
2 category of looking at today's or what happened with
3 looking at Form 3 or Form 1 or 2 with today's
4 satellite carriers. That was never an issue.

5 And historically, I didn't -- I'm
6 encouraged by Mr. Garrett going back to the old
7 decision; but as of today, that's something --

8 CHAIRMAN GRIFFITH: The objection is
9 overruled.

10 BY MR. GARRETT:

11 Q Mr. Cooper, my question was going to be --
12 the satellite carriers today would have revenues that
13 would put them in the Form 3 category?

14 A To the best of my knowledge, that's true.

15 Q Okay. Now let me go back again to the
16 1988 act. You, as you testified, tried to determine
17 what the average Form 3 cable system would have been
18 paying on a per signal per subscriber basis, correct?

19 A That's correct.

20 Q And cable operators carry maybe hundreds
21 of different independent signals, correct?

22 A Oh, yeah.

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1 Q Yeah. And you understand that in this
2 proceeding the only independent stations that are
3 being carried by the satellite carriers are seven:
4 WTBS, WGN, WWOR, WSBK, WPIX, KTLA, and KWGN, correct?

5 A That's true.

6 Q Okay. But cable operators carry signals
7 in addition to those seven, correct?

8 A That's correct, depending on their
9 location.

10 Q And so when you calculated the average
11 cable cost back in -- for the 1988 act, you were
12 looking at what was being paid on average for all of
13 those different signals?

14 A Only those that were distant.

15 Q Only the ones that were distant.

16 But there were hundreds that were distant?

17 A Yes, some much more than the others. TBS
18 alone accounted for like 75% of the total.

19 Q Okay. And the royalties that a Form 3
20 cable system pays depends on a number of different
21 factors, correct?

22 A Yes, indeed.

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1 Q And one factor is how much the cable
2 operator's charging for the basic service that
3 contains the broadcast signal, is that correct?

4 A That's correct.

5 Q And another factor would be the number of
6 signals that the cable operator is allowed to
7 transmit?

8 A The number that the cable system is
9 authorized to carry under the FCC rules.

10 Q Okay. And by the FCC rules, you're
11 talking about the FCC rules that were in effect back
12 in 1976, is that correct?

13 A That's correct.

14 Q And cable operators carry some signals
15 that were permitted under those rules and some that
16 were not permitted under those rules, correct?

17 A That's true.

18 Q And they pay different royalty rates for
19 those that were permitted and those that were not
20 permitted, correct?

21 A That's correct.

22 Q And we have basically three different

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1 royalty rates that cable operators pay, correct?

2 A Yes, sir.

3 Q All right, we have the base rates, we have
4 the 3.75 rate, and we have the syndex surcharge,
5 correct?

6 A Right.

7 Q All right, and the base rates are the
8 rates that apply to the signals that were authorized
9 to be carried under the rules in effect in 19 -- the
10 FCC rules in effect in 1976, correct?

11 A That's correct.

12 Q And the 3.75 rate is the rate that applies
13 to those signals that were not authorized to be
14 carried under those rules, correct?

15 A Both independents and non -- and network
16 affiliates, yes.

17 Q Okay. And the syndex surcharge is a
18 surcharge that is added to those distant signals that
19 were not subject to the exclusivity provisions of the
20 FCC syndicated exclusivity rules, correct?

21 A Yes, sir; those apply only to cable
22 systems in the top 100 markets.

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1 Q Okay. Now on the base rates -- again,
2 those rates are a percentage of the --

3 A Gross receipts.

4 Q Go ahead.

5 A Gross receipts for basic service.

6 Q And for the first -- what they call
7 distant signal equivalent and we'll define that in a
8 minute; but the first distant signal equivalent is
9 charged at a rate of .893%?

10 A As of now.

11 Q Okay. And the second through fourth DSE's
12 is charged at a rate of .562%, is that correct?

13 A That's correct.

14 Q So each of the second through fifth DSE's
15 would be charged at a rate of .562% of the gross
16 receipts, correct?

17 A Right, and that's of course the base rate
18 and those amounts that you're dealing with apply to
19 both independents and network affiliate stations.

20 Q Okay. All right, and for the sixth --
21 above DSE's, the rate would actually be -- is it
22 .235%?

1 A Yes.

2 Q Okay. All right, now those are -- what I
3 put up on the board here, those are all the rates that
4 apply to signals that were authorized to be carried
5 under the old FCC signal carriage rules, correct?

6 A That's correct.

7 Q Now but if you have a signal that's not
8 authorized to be carried under the old FCC rules, they
9 would pay 3.75%, correct?

10 A Yes.

11 Q I'm sorry?

12 A Yes, 3.75%, yes.

13 Q Of the gross receipts, correct?

14 A Right.

15 Q And the syndex surcharge gets even more
16 complicated because you have different rates depending
17 upon whether you're in the top 50 markets or the
18 second 50 markets, correct?

19 A That's correct.

20 Q And they also vary by the number of DSE's
21 that you carry, correct?

22 A Yes.

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1 Q And all of these rates are set forth in
2 the Copyright Office rules, correct?

3 A That's correct.

4 Q Section --

5 A 201.

6 Q Point -- help me out, Allen.

7 A Well, they come out in the -- those rates
8 are set forth in the forms which the Copyright Office
9 distributes to cable operators.

10 Q Okay. Now again, when you calculated that
11 12 and three cent rates for the 1988 act, that was
12 what a cable system on average was paying per distant
13 signal, correct?

14 A That's correct.

15 Q Okay. And some cable operators might be
16 paying substantially more than that 12 cent or three
17 cent figure that you had if it wasn't the average
18 cable system?

19 A It would be a multiple of the 12 cents.

20 Q Okay. And that would be the case if they
21 were carrying many distant signals, correct?

22 A That's correct.

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1 Q And also that the amount that they would
2 pay would vary depending upon what they were charging
3 their subscribers for that service, correct?

4 A That's correct.

5 Q So you could have two cable operators,
6 each of which was -- had the same number of
7 subscribers, had the same distant signals, but one
8 charged twice what the other one did.

9 A Paid twice.

10 Q The royalty would be twice as high,
11 correct?

12 A That's correct.

13 Q But what you had in that 1988 act was just
14 what the average cable system was paying?

15 A That's correct.

16 Q Now you understand that in the original
17 1988 act, the arbitration panel was directed --
18 adjusted the royalty rates that were in the original
19 act, do you recall that?

20 A That's correct.

21 Q And the factor -- a factor that they were
22 supposed to look at was the average cable rate,

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1 correct?

2 A That's correct.

3 Q And you testified in the 1992 proceeding,
4 you presented --

5 A What the average cable rates were.

6 Q Okay. Now let me just direct your
7 attention here to another exhibit that Mr. Seiver put
8 in, SBCA Exhibit 17-X.

9 A I have that, sir.

10 Q SBCA Exhibit 17-X shows the different
11 packages of programming being offered by Programmers
12 Warehouse, correct?

13 A Correct.

14 Q Let's just start over with the total basic
15 package which is all the way over on the left-hand
16 side of the page. Do you see that?

17 A I do.

18 Q Now the average monthly price for that
19 total basic package is \$16.95, correct?

20 A That was the price they were asking of
21 subscribers.

22 Q Okay, and if they bought it for a whole

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1 year, then the price would go down per month from
2 \$16.95 to about \$15.40, correct?

3 A Yes, \$185 divided by 12.

4 Q All right, now this package consists of a
5 number of cable networks and super stations, correct?

6 A That's correct.

7 Q Can you identify the super stations for
8 us?

9 A They are -- one lists TBS; the other
10 three are WGN, WSBK, and WWOR.

11 Q Okay. Now if a cable operator were to
12 offer a package such as this total basic for \$16.95 a
13 month with those four super stations, that particular
14 cable operator would have four DSE's, correct?

15 A There would be four DSE's for it.

16 Q All right, and that's because each
17 independent station --

18 A Count as one.

19 Q One DSE?

20 A That's correct.

21 Q All right, and if you had network
22 stations, those would be counted at .25 DSE's,

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1 correct?

2 A And that's correct, Mr. Garrett.

3 Q All right. And that, I think as you
4 testified before, is because network programming is
5 not compensated for under Section 111, correct?

6 A That's correct.

7 Q But it is compensated for under Section
8 119, correct?

9 A That's correct.

10 Q Now that cable operator with the total
11 basic package here of four DSE's would pay .893% of
12 that \$16.95 fee for the first DSE, correct?

13 A Okay.

14 Q Is that correct?

15 A Yes.

16 Q And then for the second DSE, he would pay
17 the .562% of the \$16.95?

18 A That's correct.

19 Q Now for the third and fourth, would you
20 agree with me that he would be likely to pay a 3.75
21 fee?

22 A Quite likely, yes.

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1 Q Is it not the case that cable operators
2 who carry three, four, or more distant independents
3 are typically paying the 3.75 fee for three and above,
4 correct?

5 A That's correct.

6 Q Okay. Is that correct?

7 A Yes.

8 Q So if I took 3.75% of the \$16.95, what
9 would be the fee that the cable operator would pay for
10 that third and fourth DSE's in that total basic
11 package?

12 MR. SEIVER: Objection, Your Honor.

13 This is going now far beyond the scope of
14 direct, beyond the scope of my cross; and in much the
15 same way that Mr. Lane objected, Mr. Garrett is making
16 him into a witness for his case so he can put this on
17 in rebuttal. He doesn't need this witness to make
18 this issue.

19 I know of no reason why we should take up
20 the time. I think it would have been better spent on
21 the witness' exhibit and the witness' testimony rather
22 than Mr. Garrett's.

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1 MR. GARRETT: Your Honor?

2 CHAIRMAN GRIFFITH: Go ahead.

3 MR. GARRETT: My question was simply to
4 have him do the calculation of 3.75% times the \$16.95.
5 That's the question that's being objected to. But as
6 to the point that's being made here by counsel, Mr.
7 Seiver gets up and questions Mr. Cooper at some length
8 about these 12 cent and three cent rates, you know,
9 leaving the impression that all cable operators are
10 out there paying 12 cents and three cents for a
11 distant signal here.

12 And that is simply misleading. What I am
13 doing here is showing why it is misleading. I'm
14 showing why, using some of the examples that he
15 himself has put into the record here, cable operators
16 are in fact paying substantially more to offer the
17 kinds of packages that his clients are offering here.

18 And I think that's appropriate cross
19 examination. That's appropriate given the nature of
20 the cross examination that he himself has already done
21 in this case.

22 MR. SEIVER: This is not a cable

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1 operator's package. If he wants to put a cable
2 operator's package up there and ask him, fine. This
3 is not a cable operator's package. And he's asking
4 him to stick under the 111 license with all of the --
5 I'm going to have another 15 minutes with Mr. Cooper
6 as to how the 111 rules might apply and some other
7 questions.

8 That's why his question is misleading.
9 This is not the way a cable operator would structure
10 his programming in order to pay copyright, and Mr.
11 Garrett knows that.

12 MR. GARRETT: We're trying to determine,
13 Your Honor, what his people would be paying if they
14 were paying cable operator Section 111 compulsory
15 licensing rates. I think it's appropriate to take the
16 kinds of packages that are being offered by his side
17 here and show you what they would be paying if they
18 were doing Section 111 compulsory licensing rates
19 here.

20 I don't care --

21 MR. SEIVER: -- direct case.

22 MR. GARRETT: I don't care if he takes

1 another 15 minutes to cross examine. I'll take
2 another 15 minutes after that. But the point is that
3 I think it's unfair given the nature of his cross
4 examination to leave the record back -- cable
5 operators are all out there paying 12 cents per
6 subscriber per month for a distant signal.

7 And this line of cross examination is
8 designed to make that point. And again, the question
9 we're arguing over is how much is 3.75% of \$16.95.

10 MR. SEIVER: Not because I feel like I
11 have to have the last word, but Mr. Cooper did testify
12 to 12 and three in his direct testimony with Mr. Lane.

13 CHAIRMAN GRIFFITH: Okay. Is this the
14 last question you have with respect to this?

15 (Laughter.)

16 MR. GARRETT: I detect from that that it
17 should be.

18 The answer is yes, Your Honor.

19 CHAIRMAN GRIFFITH: Since we feel
20 competent to do the math, we will overrule the
21 objection and let him go ahead and testify to it in
22 view of the fact that this is the last question.

1 MR. GARRETT: All right.

2 BY MR. GARRETT:

3 Q Can you tell us what 3.75% is of \$16.95?

4 And you can use Mr. Seiver's calculator.

5 A It will round off to 64 cents.

6 Q Sixty-four cents per subscriber per month?

7 A Right.

8 Q That's -- let me --

9 MR. SEIVER: That's Mr. Garrett's
10 testimony.

11 CHAIRMAN GRIFFITH: I understand.

12 BY MR. GARRETT:

13 Q Now let me also ask you to focus here
14 again on SBCA Exhibit 17-X down at the bottom of that
15 first page.

16 A Yes, I see it.

17 Q You see the reference there to PrimeTime
18 24?

19 A Yes.

20 Q Are you familiar with the PrimeTime 24
21 package?

22 A Yes, I am.

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1 Q The PrimeTime 24 package consists of three
2 network affiliates, one from ABC, one from CBS, and
3 one from NBC, correct?

4 A That's correct.

5 Q And those signals are paid for under the
6 Section 119 compulsory license?

7 A That's correct.

8 Q And I see that you can get PrimeTime East
9 or West for \$3.00 a month, correct?

10 A That's correct.

11 Q And what is the royalty fee that is paid
12 under Section 119 for PrimeTime East or PrimeTime
13 West?

14 A The royalty fee that's paid for those?

15 Q Yes.

16 A By TVRO satellite carriers?

17 Q Yes, under Section 119.

18 A Under Section 119 it would be three times
19 the rate which is six cents or 18 cents.

20 Q All right, and this is a -- the PrimeTime
21 24 is a service that can be added to any package that
22 is offered here by program choice?

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1 A It's an à la carte purchase.

2 Q Okay. Now let me ask you to turn to the
3 second page. Over on the right-hand side, about
4 midway down, do you see a reference there to sports
5 packages?

6 A Yes, I do.

7 Q And let me just go down -- go down all the
8 way in that block to -- do you see the Power Hitter
9 package?

10 A Yes.

11 Q And the Power Hitter package is sold for
12 \$21.00 a month, correct?

13 A That's correct.

14 Q And the Power Hitter package contains
15 signal KTLA, correct?

16 A Yes.

17 Q And that is a super station that is
18 retransmitted pursuant to Section 119?

19 A Right.

20 Q And it also contains KWGN, do you see
21 that?

22 A Yes.

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1 Q KWGN is also a super station retransmitted
2 pursuant to Section 119, is that correct?

3 A That's correct.

4 Q And TBS likewise is a super station
5 retransmitted pursuant to 119, correct?

6 A Yes, at this time.

7 Q And WGN is a super station transmitted
8 pursuant to 119?

9 A That's correct.

10 Q And WWOR is a super station retransmitted
11 pursuant to 119?

12 A Yes.

13 Q And WSBK is also a super station
14 retransmitted pursuant to 119?

15 A Yes.

16 Q And all of those are included within this
17 sports package called Power Hitter?

18 A Yes.

19 Q And the monthly fee for that is \$21.00?

20 A Yes.

21 Q Am I correct that KTLA is sold for --
22 under the 119 compulsory license here for 14 -- I'm

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1 sorry, 17½ cents per subscriber per month?

2 A That's correct.

3 Q And KWGN would also be at the 17½ cent
4 rate?

5 A That's correct. Both super stations.

6 Q All right, but TBS is at the 14 cent rate,
7 correct?

8 A That's because it's syndex proof.

9 Q Okay. And WPIX would be at the 17½ cent
10 rate?

11 A Right.

12 Q And WGN at the 14 cent rate?

13 A WWOR.

14 Q WWOR is at the --

15 A Fourteen.

16 Q And WSBK at the 17½ cent rate?

17 A Seventeen.

18 MR. GARRETT: I have no further questions.

19 CHAIRMAN GRIFFITH: All right.

20 MR. GARRETT: Thank you.

21 CHAIRMAN GRIFFITH: Any other cross
22 examination?

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1 Ms. Woods?

2 CROSS EXAMINATION

3 BY MS. WOODS:

4 Q Mr. Cooper, I'm Michelle Woods for the
5 Public Televisions Claimants. I believe we've met
6 before.

7 A Good morning again, Ms. Woods.

8 Q Good morning.

9 Mr. Cooper, I'd like you to continue
10 looking at SBCA Exhibit 17-X that was marked for
11 identification at the second page. And I'd ask you to
12 look over on the left-hand column at the à la carte
13 services and to go down to KRMA.

14 Would you describe for us what KRMA is?

15 A Pardon me?

16 Q What is KRMA?

17 A KRMA is the Denver Public Television
18 Station.

19 Q So that would be available as an à la
20 carte service?

21 A It's available on an à la carte basis, but
22 with territorial restrictions depending upon whether

1 KRMA is available locally.

2 Q So it would only be available to unserved
3 areas?

4 A In areas that it's not normally
5 receivable.

6 Q And if you could just look over to the
7 right for me, Mr. Cooper, what would be the annual fee
8 for receiving KRMA?

9 A \$9.75.

10 Q And the six month fee?

11 A \$4.95.

12 Q The quarterly fee?

13 A \$2.50.

14 Q And the monthly fee?

15 A The monthly fee is -- for KRMA is 95
16 cents.

17 Q Now Mr. Cooper, Public Television stations
18 are treated at the network rate under Section 119, is
19 that correct?

20 A That's correct, yes.

21 Q And so what is that rate?

22 A That rate is six cents.

1 Q So if we were looking on an annual basis
2 at what is paid for by the satellite carrier for
3 Section -- for station KRMA, could you do that
4 calculation for us?

5 A Seventy-two cents.

6 Q Thank you.

7 MS. WOODS: Those are all the questions I
8 have.

9 CHAIRMAN GRIFFITH: All right, any further
10 cross examination?

11 Any redirect?

12 MR. LANE: Yes, sir.

13 CHAIRMAN GRIFFITH: Please.

14 REDIRECT EXAMINATION

15 BY MR. LANE:

16 Q Mr. Cooper, do you recall being asked some
17 questions about whether cable operators only package
18 broadcast channels in a tier?

19 A In the tier, they package only broadcast
20 channels.

21 Q Do you recall in 1976 when Section 111 was
22 passed whether cable systems only packaged broadcast

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1 channels in a tier?

2 A In '76, they packaged all of their
3 channels expect for pay channels as the basic tier.
4 They only had one basic tier, and that included both
5 the broadcast channels and the non-broadcast, non-pay
6 channels.

7 Q You were asked some questions about the
8 effect of including premium channels in a satellite
9 carrier package, do you recall that?

10 A Yes, sir.

11 Q To your knowledge, do cable systems ever
12 include premium channels in the same tier with basic
13 channels?

14 A They never do. They're always separate.

15 Q Mr. Cooper, could you look at Table 4 of
16 your testimony on page 11, please.

17 A I have it, Mr. Lane.

18 Q And also, if you would kind of look at
19 Table 5 or at least keep that -- I think it's pretty
20 much the same channels, is it not?

21 A Yes, sir.

22 Q And you were asked some questions about

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1 these channels and about their popularity. Do you
2 recall that?

3 A Yes.

4 Q Are you familiar with the non-broadcast
5 channels in this table?

6 A In this table? This has very few non-
7 broadcast channels.

8 Q Right. And are you generally aware from
9 your work about how many cable subscribers would
10 receive these channels?

11 A Non-broadcast channels?

12 Q Yes.

13 A We're probably talking in the range of 30
14 to 50 million for each one of them.

15 Q And would that make those non-broadcast
16 channels among the most popular in terms of number of
17 subscribers?

18 A Certainly.

19 Q And are you also familiar with the
20 carriage of the stations WTBS, WGN, WPIX, and KTVT
21 that are listed?

22 A I am familiar with them.

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1 Q And that's something you'd look at the
2 course of your business?

3 A Yes. And as I said earlier during earlier
4 testimony, WTBS itself, its retransmission, accounts
5 for approximately 75% of the total cable royalties.

6 Q So it's very widely carried in the cable
7 --

8 A It's carried by virtually every cable
9 system in the United States.

10 Q And do you know what position WGN would
11 take in the same order of carriage?

12 A WGN would be the second most popular, but
13 there would be a large gap between WGN and WTBS.

14 Q And are WPIX and KTVT also widely carried
15 distant signals?

16 A They are widely carried; but again, to a
17 lesser extent than TBS.

18 MR. LANE: Those are all the questions I
19 have on redirect, Mr. Chairman.

20 CHAIRMAN GRIFFITH: All right, sir.

21 MR. SEIVER: If I may have recross, Your
22 Honor.

1 CHAIRMAN GRIFFITH: All right.

2 RECROSS EXAMINATION

3 BY MR. SEIVER:

4 Q Mr. Cooper, to your knowledge, is there
5 anything that prevents the satellite carriers from
6 uplinking more super station signals if they get
7 retransmission consent?

8 A I don't know any limitation.

9 Q And when you testified in 1992, were there
10 more, less, or the same number of super stations as
11 there are today?

12 A Well, there may have been one or two more
13 in those days.

14 Q And in fact, so we can make it clear, in
15 your Table 4, you made reference to KTVT. That's no
16 longer a super station, is it?

17 A No, it is not. And also one of the
18 earlier super stations, KTVU in San Francisco, which
19 is no longer a super station.

20 Q All right, have you been aware of the
21 change in the number of cable networks that have been
22 distributed in the years 1992 to the present?

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1 A You mean the number of basic cable
2 networks?

3 Q Yes.

4 A Oh, it's been a very -- it's been a
5 tremendous proliferation. Probably the number in
6 hours are far times more than there were in 1992.

7 Q And in the satellite business, were you
8 aware at the time the number of total subscribers in
9 1992, assuming there was -- I don't think we have to
10 assume. There was no high powered DBS service
11 available?

12 A That's correct.

13 Q It was just a C-band then?

14 A More or less for me, whether I thought
15 that -- the number at that time was in the range of
16 four million.

17 Q Do you know what the -- today's total
18 subscriber count is?

19 A Including the DBS?

20 Q Yes.

21 A Probably around seven million.

22 Q And do you know what the C-band component

1 is of that?

2 A Probably about the same number.

3 Q Has the C-band market pretty much
4 flattened or stabilized?

5 A Yes.

6 Q So there are not really any new
7 subscriptions relatively?

8 A Relatively, there's no major addition.

9 Q The growth isn't there?

10 A That's correct. This may change as new
11 devices are brought in to expand the number of signals
12 that can be received on the C-band. It's part of the
13 digital changes that are taking place.

14 Q Well, I wanted to ask you if Section 111
15 applied to the satellite carriers, you don't know how
16 any of them might respond or restructure any of their
17 packages with respect to the copyright obligations, do
18 you?

19 A No, I don't.

20 Q And do you know how many DTH customers --
21 that's satellite customers -- live in areas that would
22 be outside of all of the 35 mile zones?

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1 A You mean the way they would be distant
2 signals?

3 Q Yes.

4 A I would speculate that it might --
5 particularly among the C-band, that most of those
6 would be not living in urban areas. They would live
7 in rural or exurban areas.

8 Q And am I correct that the 3.75% is not
9 paid for carriage in those areas that are outside the
10 35 mile zone?

11 A No, would you repeat that, please?

12 Q Am I correct that the 3.75 penalty is not
13 paid for the --

14 A It is.

15 Q Outside of those zones?

16 A Yes, it is. The 3.75 applies only to
17 distant signals.

18 Q Oh, if a distant signal is carried though
19 and a subscriber though is outside of the 35 mile zone
20 is what I meant -- of all 35 mile zones.

21 A It's a little confusing. Would you try
22 once more, please?

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1 Q Well, let me move on.

2 The subscriber's location is going to be
3 important in determining what the royalty structure
4 would be?

5 A That's true.

6 Q And do you know how many DTH carriers
7 compete with cable operators who carry what are known
8 as grandfathered signals?

9 A I don't know the answer to that.

10 Q And am I right to say that the 3.75
11 penalty would not apply to carriage of grandfathered
12 signals?

13 A It does not.

14 Q And do cable rules allow for substitution
15 of new signals?

16 A Yes, they do.

17 Q And the number of permitted signals -- the
18 term permitted signals can vary by cable system and
19 market in history, can it not?

20 A That's correct.

21 Q And if one wanted to know what a cable
22 operator -- Form 3 cable operators paid on average,

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1 wouldn't you take all the different royalties that
2 they all pay and add it up and then divide it out?

3 A That's what I would do, yes.

4 Q And that's how you got to the --

5 A That's how we did it, that's correct.
6 That's how the 1980 -- the calculation for '86 was
7 done.

8 Q Now most of your testimony has been
9 focusing -- and a lot of my examination this morning
10 on à la carte rates. And we had been talking about
11 the à la carte rates per signal. And I think -- let's
12 assume for purposes -- I'm not trying to change it,
13 but for ease of calculations, that it's a dollar a
14 signal.

15 Is that in the range of --

16 A Yes.

17 Q I mean, I think you showed us sometimes it
18 was 89 --

19 A For the non-paying services.

20 Q For the non-pays. I'm just talking for
21 the broadcast signals. Some were 89 cents and --

22 A That's correct.

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1 Q -- I think it was \$1.95 to two and --
2 let's just say it's a dollar.

3 A Precisely, precisely.

4 Q And let's go with Mr. Garrett's example of
5 somebody buying six à la carte signals and each one's
6 a dollar. And the royalty on that first signal would
7 be the .893%, am I right?

8 A Right.

9 Q And so I'm going to write down -- the
10 first one would be nine cents, right, for the first
11 one?

12 A Right.

13 Q .09. And the second signal would be at
14 the .562 rate, am I correct? So that would be --
15 let's round it up to six cents.

16 And then the third signal, fourth, fifth,
17 and sixth would all be at the 2½?

18 A Except for those with --

19 MR. LANE: No, that's wrong.

20 THE WITNESS: Except that 3.75 would
21 apply.

22 BY MR. SEIVER:

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1 Q .009, I'm sorry. .009, .006 and .00 --
2 should I call it three?

3 A Whatever.

4 Q And then there's going to be -- so the
5 total --

6 A No, that's wrong. It is nine cents.

7 Q It is nine?

8 A It is nine cents.

9 Q .08 -- I mean .8%, .9%.

10 A Nine percent of a dollar is nine cents.

11 Q Right, but .9% of a dollar -- .9% of a
12 dollar is .9 cents, is it?

13 A Okay.

14 Q So it's .009.

15 A About a penny then.

16 Q So it's about a penny, and then 6/10 of a
17 penny, and then 3/10 of a penny?

18 MR. LANE: Excuse me, the third signal is
19 paid at the same as the second.

20 MR. SEIVER: I'm sorry.

21 MR. LANE: This is why I objected to this.
22 This is Mr. Seiver trying to get Mr. Cooper to do

1 things --

2 MR. SEIVER: You didn't object to Mr.
3 Garrett.

4 MR. LANE: Mr. Garrett didn't ask the same
5 questions you did.

6 MR. SEIVER: And he's not on the same
7 side.

8 BY MR. SEIVER:

9 Q And the sixth signal, I'm sorry, would be
10 the .00 -- let's round that up to three. .036, so
11 it's about four cents?

12 A Okay.

13 Q .036 cents for the royalty. And then we
14 have the -- let's assume the 3.75 applies. And we
15 would apply the 3.75 to how many of the signals, the
16 last four?

17 A Yes.

18 Q So 3.75% of -- would be the \$4.00, right?
19 And would that be about 15 cents? Can you -- do you
20 have a calculator? I'll let you try mine.

21 Oh, Mr. Garrett's calculator.

22 MR. GARRETT: I took mine back.

1 THE WITNESS: It's 15 cents.

2 BY MR. SEIVER:

3 Q So we have about .186 -- let's say 19
4 cents.

5 A You multiply the --

6 Q Is that right?

7 A Okay.

8 Q For the carriage of six distant signals at
9 the cable rate using the à la carte pricing.

10 A All right.

11 MR. SEIVER: That's all I have.

12 CHAIRMAN GRIFFITH: All right.

13 Anything further?

14 Mr. Cooper, thank you very, very much,
15 sir. You may step --

16 MR. LANE: Whoa, whoa, whoa.

17 MR. SEIVER: Re, re --

18 MR. GARRETT: Whatever you did, I want to
19 do it.

20 (Laughter.)

21 CHAIRMAN GRIFFITH: I apologize, Mr.
22 Garrett.

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1 MR. GARRETT: That's all right.

2 RECROSS EXAMINATION

3 BY MR. GARRETT:

4 Q Mr. Cooper, Mr. Seiver asked you some
5 questions about C-band, do you recall that?

6 A Yes.

7 Q And asking whether or not the growth of C-
8 band had flattened in the last year or two, correct?

9 A That's correct.

10 Q All right, and you understand that the
11 royalty rates that are being set in this proceeding
12 apply not only to the C-band satellite carriers but
13 also to DBS or Ku-band?

14 A Indeed, I do.

15 Q And the -- at the time of the 1992
16 proceeding, the number of DBS subscribers was
17 relatively --

18 A Was none.

19 Q -- virtually none. And do you know how
20 many DBS subscribers there are today?

21 A There are about four million.

22 Q And do you know what the industry

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1 projections are for the growth of DBS during the years
2 that the royalty rates set by this Panel will be in
3 effect?

4 A Probably the industry I thinks look at
5 around 15 to 20 million.

6 Q Okay. And would it be fair to say that
7 much of that growth is expected to come within the
8 urban markets?

9 A Yes.

10 Q Okay.

11 A To the extent to which DBS is directly
12 competitive with cable.

13 Q And the 3.75% rate that we were talking
14 about before is certainly applicable in the urban
15 markets, correct?

16 A Absolutely.

17 Q Okay. Mr. Seiver also asked you about a
18 cable operator who would carry just six independent
19 signals, do you recall that?

20 A That's correct.

21 MR. SEIVER: I think I used -- I think I
22 was using the satelllite carrier, not a cable operator.

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1 BY MR. GARRETT:

2 Q Are you aware of any cable operators who
3 carry six distant independent signals?

4 A I believe there could be some.

5 Q Okay. And those cable operators would
6 generally be carrying those signals as part of a
7 package, will they not?

8 A It would be part of their basic service.

9 Q Right, is that correct?

10 A Yes.

11 Q Now and the 3.75% rate applies to all of
12 the revenues from the -- of that basic service?

13 A Right.

14 Q And the 3.75% rate was adopted by the
15 Copyright Royalty Tribunal in a 1982 decision?

16 A That's correct.

17 Q And that was intended to be a marketplace
18 rate?

19 A That would be the first time we had a
20 marketplace rate.

21 Q And that 3.75 rate when it was determined
22 was based on the fact that cable operators are

1 offering those signals in packages, correct?

2 A That's correct.

3 Q And not on an à la carte basis, is that
4 correct?

5 A That's correct.

6 MR. GARRETT: I have no further questions.

7 CHAIRMAN GRIFFITH: All right.

8 Any further cross examination?

9 Any further direct?

10 MR. LANE: No, I have no redirect.

11 CHAIRMAN GRIFFITH: Mr. Cooper, sir, you
12 may step down now. Thank you very much.

13 THE WITNESS: Thank you.

14 (The witness was excused.)

15 CHAIRMAN GRIFFITH: Let me just inquire
16 one thing. Mr. Wilson is supposed to be next, right?

17 MS. WOODS: Yes; that's correct, Your
18 Honor.

19 CHAIRMAN GRIFFITH: Would it be possible
20 to get Dr. Crandall's direct testimony in before 1:00,
21 do you think? If that's -- I'm trying to not create
22 a problem; I'm trying to resolve one.

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1 MS. BEHAN: I can --

2 CHAIRMAN GRIFFITH: Is that agreeable with
3 you, Ms. Woods, or not?

4 MS. WOODS: Sir, our PBS general counsel,
5 Paula Jameson, has come over to join us, but I think
6 we could wait for that period.

7 CHAIRMAN GRIFFITH: All right, then we
8 would take him right after lunch, and there would be
9 no break in his testimony.

10 MR. SEIVER: So I understand it that Mr.
11 Crandall would just do direct and leave, and then Mr.
12 Wilson would come back on?

13 CHAIRMAN GRIFFITH: That's right. Mr.
14 Wilson would come back on and then we'd do the cross
15 examination of Mr. Crandall first thing in the
16 morning, agreeable? Okay.

17 THE WITNESS: Thank you.

18 CHAIRMAN GRIFFITH: We need to get our
19 information on Mr. Crandall. Can we just take a five
20 minute recess?

21 Yes, Ms. Woods?

22 MS. WOODS: I was going to ask how long

1 that is, Your Honor, because we apparently have to get
2 the sound system hooked back up in order to show our
3 video exhibits.

4 CHAIRMAN GRIFFITH: Okay.

5 MS. WOODS: But perhaps we should ask
6 Tanya to do that over lunch.

7 CHAIRMAN GRIFFITH: Yes.

8 MS. WOODS: She said it would be about ten
9 minutes.

10 CHAIRMAN GRIFFITH: We'll be out of here
11 from at least 1:00 until 2:00 for lunch.

12 MS. WOODS: Okay, thank you.

13 CHAIRMAN GRIFFITH: Ms. Behan, could you
14 wait just a moment while we go get our information?

15 MS. BEHAN: Yes.

16 (Whereupon, the foregoing matter went off
17 the record at 12:20 p.m. and went back on
18 the record at 12:22 p.m.)

19 CHAIRMAN GRIFFITH: Thank you. Have a
20 seat, please.

21 Whereupon,

22 ROBERT CRANDALL

1 was called as a witness, and after having been first
2 duly sworn, assumed the witness stand, was examined
3 and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. BEHAN:

6 Q Good morning, Dr. Crandall.

7 A Good morning.

8 Q Can you state your full name for the
9 record?

10 A Robert W. Crandall.

11 Q And what is your current title?

12 A I'm a Senior Fellow in Economic Studies at
13 the Brookings Institution in Washington.

14 Q Okay, what is the Brookings Institution?

15 A It's a nonprofit research institution
16 popularly known as a think tank.

17 Q Okay. And for how long have you been
18 employed there?

19 A Nineteen years.

20 Q What is the current focus of your research
21 at the Brookings Institution?

22 A Most of our research is directed toward

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1 the economics and regulation of the telecommunication
2 sector.

3 Q Have you had any other areas in which you
4 focused on while you were at the Brookings Institution
5 in those 19 years?

6 A Well, I've done a variety of things in the
7 area of regulation and the study of specific
8 industries; everything from automobiles to steel to
9 cable television to telecommunications.

10 Q Okay. Have you ever written any books on
11 telecommunications policy?

12 A Yes, I have.

13 Q Can you briefly describe for me some of
14 those books?

15 A Well, last year, Brookings published a
16 book that Professor Leonard Waverman of the University
17 of Toronto and I wrote on the regulation of
18 telecommunications in North American; namely the
19 United States and Canada, not Mexico.

20 And we looked at how the introduction of
21 competition is affecting that regulation and how that
22 regulation could potentially be improved and

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1 eventually be replaced by competition.

2 Q Okay. What about cable TV regulation or
3 competition, what was that about?

4 A That was a book which was published also
5 last year which looked at the regulation,
6 reregulation, and reregulation of cable television
7 rates in the 70's and 80's and into the 90's with the
8 '92 act.

9 As we were writing the book and just
10 before it was published, the 1996 Telecommunications
11 Act was passed essentially freeing all cable rights
12 and regulation by 1999. But our research there looked
13 at the effects of regulation and deregulation on cable
14 rates and consumer welfare.

15 And we concluded that in the period of
16 deregulation, 1986 to '92, that consumer welfare had
17 actually improved. That is, the value of the service
18 had increased more than the rates paid by the
19 consumers.

20 Q Okay. Have you also looked at regulation
21 and deregulation in the telephone industry?

22 A Yes, that was the subject of both a book

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1 in 1991 entitled *After the Breakup* relating to the AT&T
2 break up, and the 1996 book with Professor Waverman.

3 Q Okay. What about articles? Have you done
4 any pertinent articles on telecommunications policy?

5 A I've written a variety of articles, though
6 our focus at Brookings is mostly writing monographs.
7 I've written several articles in the *Brookings Review*, and
8 I've written other scholarly articles on
9 telecommunications.

10 Q Okay, are those identified in your CV at
11 the end of your testimony?

12 A Yes, they are.

13 Q Now prior to coming to Brookings, where
14 were you employed?

15 A Well, I taught for eight years at MIT, and
16 then I came to government for one year as an advisor
17 to Commissioner Glen Robinson on a part time basis
18 while also staying in Cambridge, and then spent two
19 years at the Council on Wage and Price Stability in
20 the Executive Office of the President.

21 Q Okay, under what administrations?

22 A It was split almost evenly between the

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1 Ford administration and the Carter administration.

2 Q While there, what did you do? What were
3 your job duties?

4 A Well, the council itself looked at
5 inflationary trends across the economy as well as the
6 effect of government regulation on the price level.
7 So we had two responsibilities, and I was involved in
8 both of them.

9 Q Okay. Now have you consulted for any
10 businesses in the telecommunications area?

11 A Yes, I have.

12 Q All right. Can you identify some of your
13 clients and what you've done for them?

14 A Well, I've recently been involved in the
15 implementation of the 1996 Telecommunications Act
16 working principally for Bell Atlantic, Ameritech, to
17 some extent Bell South, U.S. West. I've done some
18 work for AT&T in the past.

19 I've worked for --

20 Q Cable companies?

21 A TCI back during the FCC general
22 investigation which led up to the 1992 act -- the 1992

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1 Cable Act. And which also examined the criteria for
2 the market dominance under the '84 Cable Act.

3 Q Okay. What about for the networks?

4 A For many years prior to that, I spent
5 mostly back in the 80's but probably extending into
6 the 90;s -- I worked for CBS and then at various times
7 for all three networks on anti-trust issues
8 specifically pertaining to the ownership of
9 programming and the provisions regarding that in the
10 network consent decrees which came out of an anti-
11 trust suit in the 1970's that the Department of
12 Justice had filed, and also before the Federal
13 Communications Commission because of their network --
14 financial interest in syndication rules.

15 Q Okay. So have you served as an expert in
16 litigation then?

17 A I have on occasions; more rare than my
18 participation in regulatory matters.

19 Q Okay. And have any of the cases that
20 you've served on involved telecommunications issues?

21 A Yes.

22 Q All right. Can you briefly identify?

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1 A Well, let's see. As far as actual
2 litigation, I was involved in one piece of litigation
3 involving an affiliation dispute in Federal District
4 Court in Columbus, Ohio. I've been involved in a
5 variety of mergers which entered the litigation
6 process but in which I never testified because they
7 were settled prior to the testimony.

8 Q And what about cable royalty distribution
9 proceedings?

10 A I've testified twice for the Joint Sports
11 Claimants in the cable royalty proceedings.

12 Q All right. For anybody else in royalty
13 proceedings?

14 A I think years ago for the NCTA in an
15 inflation adjustment proceeding.

16 Q Okay. Dr. Crandall --

17 MS. BEHAN: I'm going to present him for
18 voir dire.

19 CHAIRMAN GRIFFITH: Any questions?

20 MR. GLIST: No.

21 THE WITNESS: Excuse me. Could I get a
22 cup for some water? My mouth is very dry.

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1 MS. BEHAN: I thought you had one.

2 THE WITNESS: Go ahead.

3 BY MS. BEHAN:

4 Q All right. Dr. Crandall, what's the
5 purpose of your testimony here today?

6 A The purpose of my testimony is to present
7 the Arbitration Panel with an approach that I would
8 suggest for implementing the 1994 Satellite Home
9 Viewer Act in the determination of rates for
10 compulsory copyright to satellite carriers.

11 Q Okay. And do you have an opinion today
12 about what approach the Panel should use in making
13 that determination?

14 A Yes, I do.

15 Q All right. Can you just briefly tell the
16 Panel what that opinion is?

17 A Well, given the Satellite Home Viewer Act
18 of '94, the first sentence there on the board says,
19 "In determining royalty fees under this paragraph, the
20 Copyright Arbitration Panel should establish fees for
21 the retransmission of network stations and super
22 stations that most clearly represent the fair market

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1 value of secondary transmissions."

2 And it's my view that the best way to
3 approach this would be to look at the market for
4 similar types of programming in which willing buyers
5 and willing sellers reach deals on rates for carriage.

6 Q Okay. I'd like to briefly explore further
7 with you that opinion and the basis for it.

8 First of all though, you just indicated
9 that you believe that the first sentence is the
10 standard by which this Panel should be governed by?

11 A Well, I was suggesting that if the
12 standard is that it be fair market value of secondary
13 transmissions, then the place one would look for fair
14 market value is in negotiations -- transactions
15 between willing buyers and willing sellers of similar
16 sorts of programming, yes.

17 Q Okay. Can the Panel consider economic,
18 competitive, and programming information in reaching
19 their decision?

20 A Well, the second sentence clearly says
21 that, yes.

22 Q Okay, and would what you just explained,

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1 analogous markets, analogous transactions, would that
2 constitute economic, competitive, and programming
3 information?

4 A Well, all three of those would be involved
5 since I would suggest that you only look at program --
6 similar programming offered to and purchased by a
7 multi-channel video distributor such as cable or MMDS
8 or potentially LMDS or some of the newer technologies
9 and the telephone companies.

10 And in looking at those transactions, one
11 would have to consider the economic issues; namely
12 what the prices are, what the cost of the programming
13 is relative to other programming, and so forth; the
14 competitive conditions, the fact that these other
15 distribution technologies, other modes of distribution
16 compete with satellite broadcast systems.

17 And the programming information clearly
18 you have to consider whether the programming is
19 analogous, whether it is similar sorts of programming
20 involved.

21 Q Okay. Now Dr. Crandall, is the concept of
22 fair market value as we see there in the statute one

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1 that economists are generally familiar with?

2 A Yes.

3 Q Okay. And what do economists generally
4 mean when they use the word fair market value?

5 A Well, economists would generally refer to
6 market value. And market value would reflect what
7 willing buyers and willing sellers transact in an open
8 marketplace.

9 Q And is it then fair to say it's the price
10 that they would reach transacting in the open market?

11 A Certainly, yes.

12 Q Okay. And what other types of proceedings
13 are you familiar with that fair market value is
14 approximated outside the free market?

15 A Well, this is a proceeding involving
16 compulsory copyright, therefore you don't have a
17 willing seller. The service, the product, the good is
18 therefore being purchased by buyers from unwilling
19 sellers and it must be compensated on the basis of
20 some standard, and the standard here being fair market
21 value.

22 This happens in other proceedings which

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1 the government's involved in, most notably in eminent
2 domain takings. And in eminent domain takings, the
3 government must turn to ascertain a value of the
4 property taken from analogous property, analogous
5 land, improved land, buildings, etc.

6 Q Okay. In the video programming market
7 which is the market we're in, correct --

8 A Yes.

9 Q -- who are the buyers and sellers that are
10 involved in the sale and distribution of such
11 programming?

12 A Well, the buyers are clearly the
13 distribution services. Either in this case the
14 satellite broadcast systems, or cable systems, or MMDS
15 systems; or, as I mentioned, other newer technologies
16 such as LMDS.

17 The sellers are the owners of the
18 copyrighted product who sell their product through
19 other agents, other distributors, and maybe motion
20 picture networks who in turn sell to basic cable
21 networks, television networks, some other distributor
22 who in turn sells it to the multi-channel video

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1 distribution system.

2 Q Okay, and cable networks in this -- these
3 transactions, are they buyers, sellers, both?

4 A Well, cable networks that you're -- both
5 the basic cable networks and the premium cable
6 networks are companies which are intermediaries. They
7 arrange for programming from the copyright owners and
8 then sell it to the final distributors to the
9 consumers.

10 Q All right. Now setting aside the
11 compulsory licensing arrangements in the free market
12 for video programming, do we have evidence that we can
13 use to analyze the prices of analogous transactions?

14 A Well, it's my view that analogous
15 transactions involve other types of programming,
16 programming similar to that involved in the secondary
17 transmissions of broadcast signals which are purchased
18 by these other distribution systems; namely, again,
19 cable, MMDS, or even the satellite broadcast systems
20 themselves.

21 So there is analogous evidence, and the
22 Panel must judge what the analogs are and which

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1 programming is most analogous. But there are numerous
2 basic networks -- over 100 of them today by recent
3 count -- from which the Panel can draw these
4 inferences.

5 Q Okay, can you just explain for the Panel
6 why you've chosen basic cable networks again?

7 A Well, because they involve programming
8 that at least is similar to that which is at issue
9 here, namely the retransmission of broadcast signals,
10 because there is no open market of willing buyers and
11 willing sellers for the broadcast -- the retransmitted
12 broadcast programming to satellite systems.

13 One has to go to an analog; and the best
14 analog, it seems to me, are the basic cable networks.

15 Q Okay. Now how are basic cable networks,
16 the signals, how are they priced in the market?

17 A Well, they're priced in a variety of ways.
18 But it's my understanding that -- this is not the --
19 I don't go into this in any detail in my testimony,
20 but it's my understanding that most of them are priced
21 on a per subscriber basis to the distributing
22 organizations.

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1 Q Is that how pricing is set in the
2 compulsory licensing proceeding, to the best of your
3 understanding?

4 A It is at the present time. Under the '88
5 act, that is the way it was set. And under the
6 arbitration for the 1992 and '94 rates, that was the
7 way it was set also.

8 Q Okay. So then is it your opinion that by
9 looking at the pricing on a per subscriber, per month,
10 per signal basis of comparable cable networks that is
11 the best way that the Panel can calculate the rates
12 that should be set in this proceeding for the
13 broadcast signals that are at issue here?

14 A I think that's the best information
15 available for that purpose, yes.

16 Q Okay, thank you.

17 MS. BEHAN: That's all I have.

18 CHAIRMAN GRIFFITH: Okay, thank you very,
19 very much, sir. If you'll be back tomorrow morning at
20 9:30.

21 THE WITNESS: I shall be here.

22 CHAIRMAN GRIFFITH: Thank you so much.

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1 Ms. Woods, what's your -- do you want to
2 start now or do you want to come back at 1:45 and
3 start?

4 MS. WOODS: I would -- well, I guess
5 whatever others want, but I think it might make sense
6 to just do everything together.

7 CHAIRMAN GRIFFITH: Okay, why don't we
8 take --

9 MS. WOODS: Also, then we can get the
10 system fixed.

11 CHAIRMAN GRIFFITH: Yes, we'll get that.

12 Okay, we'll take our luncheon recess at
13 this time. We'll return at 1:45.

14 (Whereupon, the proceedings recessed for
15 lunch at 12:40 p.m.)

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A-F-T-E-R-N-O-O-N P-R-O-C-E-E-D-I-N-G-S

(1:45 p.m.)

CHAIRMAN GRIFFITH: Ladies and gentlemen,
I presume everyone signed up who wants to be admitted
on Saturday. Good. Okay. We are ready to proceed.

MS. WOODS: Thank you, your Honor.

CHAIRMAN GRIFFITH: Ms. Woods, please.

MS. WOODS: As everyone probably knows by
now already, but for the record I'll introduce myself.
I'm Michele Woods and I represent the Public
Broadcasting Service which is appearing in this
proceeding on behalf of the public television
claimants.

We just want to let you know briefly
before we go into our testimony about some of the ways
in which public television is different. That
difference, we think, is what makes public television
valuable to satellite carriers who carry public
television signals. I'd like to just talk very
briefly about what public television is, why it's
different and how our evidence is going to show its
value.

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1 You'll probably hear us use two different
2 terms during our evidence in this proceeding. The
3 first is the Public Broadcasting Service or PBS and
4 the second is Public Television or PTB. PBS is an
5 organization in Alexandria that is -- that provides
6 national programming and other national services for
7 all of its members. The public television stations,
8 we call them member stations, are all members of the
9 organization and PBS provides various services for
10 them.

11 Public television is a broader term that
12 encompasses all of the television stations and PBS and
13 actually, in some cases, might also include the
14 Corporation for Public Broadcasting or CPB. I
15 mentioned that public television is different in a
16 couple of way and one of those is that our claimant
17 group, like some here but not all of them, is made up
18 of all of the individual producers of programming, and
19 it's made up of all of the producers of programming
20 found on PBS signals.

21 So if, for instance, we've for some reason
22 acquired a program from, say, CBS, CBS would be within

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1 our claimant group for purposes of the proceedings
2 before this body. And there are over 200 individual
3 public television producers who are the copyright
4 owners who are really being represented here by PBS.

5 You know, there has been a bit of sort of
6 a poverty contest going on, whose claimants are the
7 smallest entities. We think we can probably win that
8 contest. But, talking about what our copyright owners
9 do, the copyright owners are really the rights holders
10 of the programming that is the focus of our direct
11 testimony here. Programming like Sesame Street,
12 programming like NOVA, programming like -- there is so
13 much I'm kind of blanking a bit, but recent specials
14 you may have seen like "Thomas Jefferson", Ken Burns'
15 "Civil War", "Baseball", all of those are programs
16 produced by individual program producers who are
17 represented here today as the copyright owners.

18 Another sort of confusion that may have
19 been out there thus far in the proceeding is that PBS
20 is not a network. PBS is claimed for the network
21 rating in this proceeding, but PBS is not otherwise
22 organized or operated as a commercial network like the

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1 commercial television networks.

2 I haven't been objecting or pointing that
3 out throughout the proceeding, but I do want to just
4 make sure that that distinction is clear. We do
5 receive the same rate for retransmission of our
6 signals as network stations, that is six cents per
7 subscriber per month.

8 Another obvious difference between public
9 television and some of the other claimants here is
10 that public television is a non-commercial entity and
11 so the programming on public television is also non-
12 commercial. In terms of the network comparison,
13 public television doesn't have affiliates, it has
14 member stations. And in terms of the flow -- the
15 economic flow, we can get into this more later, but
16 money flows from the member stations for the most part
17 to PBS, rather than the other way around as may occur
18 with commercial networks paying its affiliates for
19 time to place national programming with national
20 advertising on the signal.

21 One way in which PBS is joining with most
22 of the other copyright owners here is on our rate

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1 request. Our rate request, as you are probably aware
2 by now, is 35 cents for 1997, 36 cents for 1998 and 38
3 cents for 1999. Our testimony that supports that rate
4 request will be developed through two witnesses. One
5 of whom is John Wilson who is here today and will be
6 joining me up here shortly. He is the Director of
7 Programming at Public Television. The other, Linda
8 McLaughlin, who will be joining us on Saturday.

9 Our testimony is really designed to take
10 the statute that applies to the decision-making
11 standard in this proceeding, and to provide you with
12 information on all aspects of that. I'd like to just
13 walk through this briefly. The phrase that we've been
14 discussing here obviously thus far throughout the
15 proceeding is the fees for retransmission of network
16 stations and super stations that most clearly
17 represent the fair market value of secondary
18 transmissions.

19 Mr. Seiver will be happy to know that Ms.
20 McLaughlin, the economist who will be testifying, has
21 geared her testimony specifically to the fair market
22 value of secondary transmissions and that what she

1 does is she calculates a base rate based on secondary
2 retransmissions of cable networks by satellite
3 carriers and compares that to the rates that would be
4 reasonable for satellite carriers to retransmit
5 broadcast signals.

6 Now, her testimony will not go to unique
7 aspects of public television programming or indeed any
8 other programming. She calculates a minimum benchmark
9 based on the cable license fees as translated into the
10 satellite carrier market placed as a secondary market.

11 Then we go on to the three elements that
12 have already been discussed obviously for the panel,
13 those that can be used, types of information that can
14 be used to show economic, competitive and programming
15 information. I'll come back to programming
16 information in a minute. That's going to be handled
17 by Mr. Wilson today. But Ms McLaughlin also addresses
18 the economic and competitive environment in which
19 programming is distributed. And she, in making her
20 decision as to how to try and provide a useful analogy
21 or benchmark for this panel, looked at the cost of
22 similar signals and similar private and compulsory

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1 license marketplaces and special features and
2 conditions of the retransmission marketplace.

3 She concluded that the best analogy was to
4 utilize the private marketplace, in other words
5 something that approximates more fair market
6 transactions for retransmission of cable networks
7 rather than looking at the rates that apply under
8 Section 111.

9 She also discusses the special features
10 and conditions of the retransmission marketplace and
11 determines that those features that she finds do not
12 make -- don't have a major impact on her ultimate
13 conclusion that they are actually really, when you
14 look in terms of secondary marketplace and secondary
15 marketplace aren't that many conditions that you have
16 to take into account.

17 She also looks at the economic impact of
18 the fees or the proposed higher rates on satellite
19 carriers. And she determines that given the range of
20 rates charged by the satellite carriers, there is a
21 lot of room there for an addition to the rate paid
22 should the copyright rateholders of the programming

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1 that's being shown by the satellite carriers without
2 having significant detrimental economic effects on the
3 satellite carriers.

4 Then she also considers the impact on the
5 continued availability of secondary transmissions to
6 the public and she will testify that she doesn't
7 believe that the rate, the rate increase that she
8 reached in her benchmark or indeed a rate increase
9 that might take into account some other features of
10 the broadcast signals being retransmitted by satellite
11 carriers would result in a significant decline in the
12 availability of transmissions to the public.

13 As I mentioned before, Mr. Wilson will
14 talk primarily about the programming information
15 related to PBS and really in many ways we feel that's
16 the heart of our case. Our programming is different,
17 it's unique, it's first run, it's non-commercial, it's
18 educational. It provides something that families want
19 to have access to and that we believe that many
20 satellite subscribers and satellite carriers want to
21 have available.

22 And Mr. Wilson also looks at the economic

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1 impact of those fees on the copyright owners. In some
2 ways we feel like that may have, certainly in the case
3 of some of the smaller claimants here, not been as
4 much at the fore of this discussion as we hope that it
5 will be in the future. Copyright owners, at least in
6 the case of PBS, are very dependent on a continuing
7 flow of royalties from these retrans -- from
8 compensation for their programming. And so we will be
9 talking to Mr. Wilson about that today.

10 In conclusion, I don't want to take up
11 more time with the panel because we've already talked
12 about a lot of the issues that are before you the
13 previous testimony and I believe we are actually last
14 up, although I'm not positive about that. But all we
15 are really asking the Panel to do is set a rate that
16 will provide our copyright owners with a fair share of
17 the revenues that the satellite carriers are
18 generating by secondary retransmissions of our
19 programming and our signals. Thank you very much.

20 CHAIRMAN GRIFFITH: All right, thank you.

21 MS. WOODS: The Public Television
22 Claimants would like to call as their first witness

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1 John Wilson.

2 CHAIRMAN GRIFFITH: All right, Mr. Wilson?

3 WHEREUPON,

4 JOHN F. WILSON

5 was called by Counsel for the Public Television
6 Claimants and, having been first duly sworn, assumed
7 the witness stand, was examined and testified as
8 follows:

9 DIRECT EXAMINATION

10 BY MS. WOODS:

11 Q Good afternoon Mr. Wilson. I'd like to
12 start by asking you a few questions about your
13 background and experience in television programming.

14 A All right.

15 Q Would you please state your full name for
16 the record?

17 A My name is John F. Wilson.

18 Q And Mr. Wilson, what is your title at PBS?

19 A Senior Director of Program Scheduling and
20 Editorial Management.

21 Q What are your responsibilities in that
22 position?

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1 A I oversee the national schedule of
2 television programs for PBS as well as direct the work
3 of the people who bring the programs to the schedule.
4 They work in the acquisition and development of
5 programs for PBS for national distribution.

6 Q Do you have responsibility for working
7 with program budgets?

8 A Yes I do.

9 Q And what are your responsibilities in that
10 area?

11 A Working in conjunction with Kathy
12 Quattrone who is Executive Vice President of PBS
13 Program Services. We establish goals for the annual
14 budget that PBS has. We try to create the most value
15 we can for our programs and from the budgets that we
16 have.

17 Q And Mr. Wilson prior to taking on your
18 current position, what was your role at PBS?

19 A Director of Scheduling and Planning.

20 Q And what were your responsibilities in
21 that position?

22 A It was strictly the scheduling of PBS

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1 National Program Service, programs.

2 Q Now when did you make the transition
3 between those two positions?

4 A July of '96.

5 Q When did you first come to PBS?

6 A October 1994.

7 Q And what did you do prior to that?

8 A I was Program Manager at the PBS station
9 in Phoenix, Arizona, K-A-E-T.

10 Q How long were you at KAET?

11 A In various capacities about 12 years, I
12 believe.

13 Q What was your last position at KAET?

14 A Program Manager.

15 Q And what were your responsibilities in
16 that position?

17 A The acquisition, scheduling and evaluation
18 of KAET's program schedule. And I also had on air
19 fundraising and on air promotion reporting directly to
20 me.

21 Q And Mr. Wilson have you ever testified as
22 a witness before in any proceeding?

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1 A No, I have not.

2 Q We have another brand new witness here.
3 Your Honor, at this time I'd like to make the witness
4 available for voir dire.

5 CHAIRMAN GRIFFITH: All right. Cross --
6 any questions?

7 MR. SEIVER: No separate questions at this
8 time.

9 CHAIRMAN GRIFFITH: All right, thank you.

10 BY MS. WOODS:

11 Q Mr. Wilson, I'd like to start by asking
12 you some questions to allow you -- well, what I'd like
13 to do today actually is ask you some questions to
14 allow you to summarize your testimony. I'd like to
15 ask you to remember that your summary should stay
16 within the scope of your written testimony that we
17 submitted and that we should try to stick to the
18 situation as it was on December 2nd, 1996 when we
19 filed the testimony.

20 A All right.

21 Q Turning to page 3 of your testimony, do
22 you provide a summary of the major points that you

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1 will make to the Panel today?

2 A Yes I do.

3 Q Could you please briefly run through those
4 points for us and we have a chart up here that may be
5 of assistance.

6 A I think at the center of our case, the
7 centerpiece of our case is the programming itself. It
8 is distinctive, unique. We feature a host of
9 innovative programs that reinforce the value of public
10 television signals to satellite viewers and operators.
11 Our programming is distinctive in that it is
12 educational and non-commercial and chiefly non-
13 violent.

14 The PTB program schedule reflects
15 tremendous diversity across both subject matter and
16 audiences that it appeals to. The public television
17 children's programming is truly without equal, I
18 believe, in broadcast and cablecast environment. And
19 I think we can demonstrate that there are various
20 measures to show the value, the fair market value of
21 the public television signals.

22 And finally the fact that I suspect it may

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1 go without saying but it bears repeating, the revenue
2 that can be derived on behalf of our copyright owners,
3 the producing stations and independent producers is
4 vital to the ongoing success of public television.

5 Q Mr. Wilson, if I could just go back to
6 point 5 for a moment, I just want to make sure that we
7 are clear here that I believe you may have suggested
8 that your testimony actually derived fair market value
9 for public television. Is that exactly what you are
10 doing in your testimony?

11 A No, I don't mean to suggest that.

12 Q And what kinds of measures are you
13 providing?

14 A One can look at the fact, for example,
15 that something in the order of five million households
16 contribute voluntarily to public television each year,
17 somewhere in the neighborhood of \$300 million a year,
18 averaging \$63 per household. That certainly suggests
19 a high value is placed on public television
20 programming by those who contribute.

21 For instance, just doing the math breaks
22 down to something over \$5 per month per contributing

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1 household. Those are the sorts of additional measures
2 I think we can find to establish a fair market value.

3 Q Okay. Mr. Wilson, let's turn briefly to
4 page 6 of your testimony and I'd like to ask you some
5 questions about the structure of public television and
6 PBS. What role does PBS play in the overall
7 organization of public television?

8 A PBS is a member services organization that
9 essentially aggregates funds on behalf of public
10 television stations in order to achieve an economy of
11 scale in acquiring and developing programs for
12 national distribution. We also provide services to
13 our stations in terms of interconnection and some
14 expertise in terms of fundraising, promotion and so
15 forth.

16 Q And what is the role of PBS member
17 stations in the organizational structure of public
18 television?

19 A The member stations in effect own PBS.
20 They are each paying a fair share of the services that
21 public television -- that PBS provides to the member
22 stations in the nature of programming and member

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1 services. They then are the local community
2 broadcaster who actually deliver the programs to their
3 individual markets.

4 Q Could you describe for us, turning to page
5 8 of your testimony, what are the major sources for
6 public television programming?

7 A The public television programming, the
8 major sources are from the stations themselves. From
9 the, what we call producing stations who actually
10 provide programming, produce programming that is then
11 distributed by PBS back out to the rest of the
12 membership.

13 Q Could you give us a couple of examples?

14 A For example, WGBH in Boston is the
15 producer of NOVA and Masterpiece Theater and Mystery
16 and This Old House. WNET in New York produces Great
17 Performances, Going Places, and WETA here in
18 Washington, D.C. produces Washington Week in Review.

19 Q Now, Mr. Wilson, are there also other
20 producers of public television programming?

21 A Indeed there are many more station
22 producers as well as independent producers that we

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1 work with, and other international production agencies
2 that we acquire programming from.

3 Q You mentioned independent producers, could
4 you give us a couple of examples of independent
5 producers?

6 A Well perhaps the best known example of an
7 independent producer is Ken Burns, who has a terrific
8 string of programs that PBS has broadcast beginning
9 with perhaps his best known "Civil War" and then
10 "Baseball" and most recently "The West."

11 Q Turning to pages 11 and 12 of your
12 testimony, could you describe for us some of the
13 recent highlights in the PBS programming schedule?

14 A Well, I mentioned "The West" and I'll pick
15 up there. Just recently, the Fall of '96, we broadcast
16 this multi-night event that was a telling of the
17 expansion into the "American West" and it was received
18 very well by reviewers as well as the critical press.
19 And that was produced by Ken Burns and I think really
20 measured up quite well to his outstanding track
21 record.

22 And "Hoop Dreams" is a terrific example of

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1 some of the diversity of our schedule. This is a
2 project that PBS actually was very instrumental in
3 making happen and it chronicled the stories of two
4 young urban city youths as they proceed with dreams of
5 playing in the NBA. And just another example,
6 "Genesis = a Living Conversation" is a series that
7 Bill Moyers produced which was essentially a
8 discussion of the first book of the Bible, Genesis,
9 discussed from the viewpoints of several different
10 religions and backgrounds and expertise.

11 Q Okay, Mr. Wilson, do you have a video tape
12 that will show us that will illustrate some of the
13 highlights of the Fall 199-- of a recent PBS program
14 season? I believe it's Fall '96.

15 A Yes I do.

16 Q Your Honor, at this time I would request
17 permission to have -- I guess it's technically marked
18 as an exhibit, but we've actually got the video tape
19 already in the machine, PBS Hearing Exhibit 1. What
20 we are doing is introducing a new, much shorter
21 version of the video tapes that we submitted with our
22 testimony in order to expedite this process. But we

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1 wanted to give you just a little flavor.

2 And what I have prepared is placemarkers
3 that is similar to the placemarkers that we have in
4 our testimony that people can use. What we will be
5 doing is following the usual procedure that we follow
6 with video tapes which is to present an original and
7 two copies to the Copyright Office.

8 CHAIRMAN GRIFFITH: The tape is going to
9 be actually admitted into evidence?

10 MS. WOODS: That is our request, your
11 Honor.

12 CHAIRMAN GRIFFITH: That's going to be
13 your request, I understand, okay. I just wanted the
14 -- I just wanted the reporter to make a note of that
15 so she would be able to mark it at least for
16 identification when it becomes available from the
17 machine.

18 (Whereupon, the above-referred
19 to video tape was marked as PBS
20 Hearing Exhibit 1 for
21 identification.)

22 MR. SEIVER: I think our position will be

1 this will speed things up. the tapes that were
2 submitted with the Direct Case, as I understand, were
3 considerably longer and those should be the only ones.
4 So this is an amendment to the case to have another
5 version. I never compared it to see if what was
6 longer or shorter or how it's changed and I don't
7 think there is anything various in that so our
8 interest in this will substitute it -- if she wants to
9 substitute this -- if Ms. Woods wants to substitute
10 this tape -- or are there two tapes?

11 MS. WOODS: Well, we are going to play two
12 tapes, but I'm only entering one now. We've got a
13 short children's tape as well.

14 MR. SEIVER: Right, you get to play that
15 later?

16 MS. WOODS: Yes.

17 MR. SEIVER: All right.

18 MS. WOODS: We hope to -- I would just
19 like to represent to the Panel that there is only one
20 program included on this shorter version that was not
21 included on the longer tape that we submitted for the
22 Fall 1996 season, and I would expect that -- or I

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1 would hope that that would not be considered a really
2 material difference in our testimony.

3 CHAIRMAN GRIFFITH: All right, thank you.

4 THE WITNESS: Shall we?

5 MS. WOODS: Are you ready?

6 THE WITNESS: I think I've got the button.

7 CHAIRMAN GRIFFITH: Let's go off the
8 record.

9 (A short video was played.)

10 (Whereupon, the foregoing matter went off
11 the record at 2:11 p.m. and went back on
12 the record at 2:15 p.m.)

13 THE WITNESS: Sorry, the audio quality
14 wasn't better. It's not representative of the tape
15 itself.

16 BY MS. WOODS:

17 Q We had some problems actually getting the
18 system hooked back up over lunchtime. So, I had to
19 turn it back off for the interference once we
20 finished.

21 Mr. Wilson, turning back to your
22 testimony, does Public Television Exhibit 3 offer

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1 additional information on the highlights of the 1995
2 to 1996 PBS program schedules?

3 A Yes it does.

4 Q Could you just describe very briefly for
5 us what is contained at Exhibit 3?

6 A These are just a quick narrative of some
7 of the program highlights from the 1995-96 season.

8 Q And then turning to Exhibits 9 and 10, so
9 those offer more detailed information on the PBS
10 schedule?

11 A Yes they do. The -- Exhibit 9 is a look
12 at not only program titles with brief descriptions but
13 also a sense of how they are scheduled by PBS. And 10
14 is a further example of the PBS schedule in a bit more
15 of a technical format that is used for stations by
16 their operations staffs. But what it also
17 demonstrates is the daytime schedule is here with the
18 children's programs.

19 Q And Exhibit 9 is limited to the prime time
20 schedule?

21 A That's right.

22 Q Mr. Wilson, overall how much original

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1 programming does PBS offer to its member stations each
2 year?

3 A Sixteen hundred hours per year,
4 approximately.

5 Q Turning back to the text of your
6 testimony, on pages 13 through 17 you discuss thematic
7 programming initiatives of public television. Could
8 you describe some of the program fees on which PBS has
9 focused attention in recent years?

10 A Fairly recently in 1995 is, by way of
11 example, we engaged in a programming and outreach
12 campaign that focused on something called the Act
13 Against Violence Campaign. One of the programs that
14 was the centerpiece of that was a Bill Moyer's special
15 called "What Can We Do About Violence?" And we
16 extended this thematic approach into children's
17 programs as well with Mr. Rogers pitching in and doing
18 programs as well about controlling anger and violence.

19 Q You also discussed the Democracy Project,
20 correct?

21 A That's right.

22 Q Could you describe that for us a little?

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1 A The Democracy Project is an initiative
2 that was begun with the coverage of the '96 election
3 year but will continue beyond election coverage and is
4 an attempt at truly invigorating -- reinvigorating
5 public television's programs and community outreach to
6 make a sincere difference in civic participation in the
7 democratic process.

8 Q And could you just give us a couple of
9 examples of the types of programs that were included
10 in the Democracy Project? I think we saw one on the
11 video tape, is that correct?

12 A What was included on the tape was a
13 program called "Vote for Me" which looked at
14 grassroots political process and sort of the behind
15 the scenes of what it takes to run a campaign. But
16 we've also had, one thing that I think we are really
17 proud of is "PBS Debate Night, The Future of Congress"
18 a national program that tied into local programming on
19 the part of our stations that looked at the
20 Congressional races, sort of an untold story in the
21 past election year. And perhaps where there was far
22 more interest than at the Presidential level.

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1 Q And who actually appeared on "PBS Debate
2 Night" for the national program?

3 A Jim Lehrer moderated and it was a debate
4 between Newt Gingrich and Gephardt, I believe.

5 Q Leaders of the House and Senate?

6 A That's correct.

7 Q Mr. Wilson, turning to pages 18 and 19 of
8 your testimony, you describe some future initiatives
9 of PBS. Could you describe briefly for us what types
10 of programming initiatives PBS is going to undertake?

11 A Some of the examples that are listed here
12 because this was given in December have come to air,
13 for example, the Thomas Jefferson special which was a
14 two-part biography of Thomas Jefferson aired in
15 February. But just to cite another example that is
16 coming soon, the Royal Opera House is a very different
17 sort of take on the cultural world as we go behind the
18 scenes of London's Royal Opera House and look at some
19 of the backstage haggling, negotiations and drama that
20 goes on as you run a great cultural institution. And
21 I think that will be quite a lot of fun.

22 Q Mr. Wilson, does the PTB Exhibit 4 offer

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1 additional information on PTB PBS programming
2 highlights?

3 A Yes it does.

4 Q And briefly, what is contained at PTB
5 Exhibit 4?

6 A There are several snapshot descriptions of
7 programs that are in our upcoming programming pipeline
8 or in a couple of cases have just recently been
9 broadcast.

10 Q Now Mr. Wilson, starting on page 19 of
11 your testimony you discuss the diversity of PBS
12 programming. Why is it important for PBS and public
13 television to offer diverse programming?

14 A We believe it's important to offer diverse
15 programming because our mission is to serve all
16 Americans and to present programming that truly speaks
17 to everyone in the audience. So we feel it's
18 important not only to have subject matter diversity in
19 terms of interest, but also programs that reflect
20 different values and different cultures and different
21 age groups.

22 Q You talk specifically on page 21 about

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1 public television's educational non-commercial and
2 non-violent qualities. Could you briefly describe
3 those things to us?

4 A Well public television programming, I
5 believe, is educational. We think of it in terms of
6 lifelong learning beginning with the programs that are
7 aimed at preschool children on through school age
8 children. Telecourse programming, our general
9 audience programming in prime time certainly can
10 satisfy someone's hunger to continue to learn. So we
11 believe that the fact that it is truly educational
12 throughout is a terrific point of distinction.

13 And of course the fact that it's non-
14 commercial is a great point of distinction in that it
15 doesn't merely attempt to bring as many possible
16 viewers to the screen at one time merely to sell a
17 commercial spot, but instead is meant to address the
18 needs of viewers. And it also frankly means that we
19 have, in a given hour, we have more minutes of actual
20 programming on that a commercial counterpart might.

21 And also it's by and large non-violent
22 programming. Scenes of gratuitous violence are seldom

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1 seen on public television.

2 Q You mentioned that by and large non-
3 violent. What is public televisions policy toward
4 violence on television?

5 A Well we feel that it -- particularly with
6 respect to programs that are targeted to children,
7 there is no place for violence on television. And I
8 think that's evident in the children's programming
9 that we distribute.

10 In prime time where there is a general
11 audience, we believe that it only serves a place where
12 it is integral to the story, to the telling of the
13 drama or in investigative report on "Frontline" or
14 something like that. But only where necessary and
15 relevant to the program that's being produced.

16 Q Let's see, on page 23 you discuss subject
17 matter diversity on public television. Could you
18 briefly describe what you meant by that?

19 A The subject diversity is, I think is best
20 summarized by -- we have four areas of programming
21 that we pursue with a sharp focus. They are
22 essentially documentary programming, programming on

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1 the arts which includes performing arts as well as
2 drama, children's programming of course, and news and
3 public affairs programming. And within, even within
4 one of these categories, say documentary programs,
5 there is a wide array of programs and subject types
6 that can be covered there.

7 Q Now you also talk about racial, ethnic and
8 regional diversity in public television. What are you
9 describing when you talked about that?

10 A Well, we feel it's important again to
11 present programming for all Americans and we feel that
12 all of our programs should wherever possible reflect
13 that sort of diversity of the viewing audience. And
14 then we will specifically target from time to time
15 programs that are of particular interest to a given
16 culture or ethnicity or minority group.

17 Q And could you give us just a couple of
18 examples of that type of programming?

19 A Well, for example the "Hoop Dreams"
20 program that I mentioned earlier was a terrific
21 documentary that looked at the lives of two African
22 American inner-city youths. The, and other example is

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1 "To the Contrary" which is a new public affairs
2 program that spotlights a rotating panel of women with
3 diverse ethnic and racial backgrounds.

4 Q Now you also mention children's
5 programming and the diversity there in terms of
6 programming targeted to different age groups. What
7 different age groups are targeted by PBS to children's
8 programming?

9 A We have programs that are specifically
10 designed for the needs of preschool children with the
11 desire of giving those viewers, those children, a
12 foundation so that when they reach school they are
13 ready to learn. Programs like "Barney and Friends" or
14 "Mr. Roger's Neighborhood" or "Sesame Street" I think
15 have certainly done a terrific job of that.

16 School age children's programming is
17 targeted at curriculum that will be not only of
18 interest to children that age, but is also being
19 taught in school so that it serves to reinforce to
20 what they are learning while they are in school.
21 Examples of that might be "Magic School Bus" which
22 looks at science or "Reading Rainbow" and "Wishbone"

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1 which are designed to foster sort of an appetite for
2 reading.

3 Q Mr. Wilson, turning to Exhibit 20 of your
4 testimony, is this an excerpt from the testimony of
5 Robert Seiber submitted by the Motion Picture
6 Association of America in 1990 to 1992?

7 A Yes it is.

8 Q And could you just describe to us very
9 briefly what we can learn or see about the qualities
10 of public television programming from looking at this
11 survey?

12 A This survey attempted to answer the
13 question of what cable subscribers want from
14 programming. I think one of the easiest ways to sort
15 of see the results is if you flip a few pages in, it
16 looks like it's page 7 of this particular document to
17 the graph, this is a, essentially a rank ordering of
18 these attributes that those surveyed felt were
19 important to them in their programming choices. If
20 you just look at the top five or six, high quality
21 programming, limited commercial interruption, programs
22 that family can watch, a wide variety of programming,

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1 programs that make you think. Those are all
2 attributes that are very directly linked to public
3 television as well.

4 So I would suggest that if the results of
5 this survey say that those are the top things desired
6 by viewers in programming, then public television
7 satisfies almost every one of them.

8 Q And Mr. Wilson just to clarify here, this
9 survey was done for TBS right? It was not done for
10 public television?

11 A That's right.

12 Q And it was a survey of cable subscribers
13 -- actually from the survey -- right -- of subscribers
14 who were both viewers and non-viewers, correct?

15 A That's right.

16 Q Mr. Wilson, on page 31 of your testimony,
17 you discussed the cable look alike channels. And I'd
18 like to ask you first to describe to us what is a PBS
19 look alike on cable?

20 A That is a channel that attempts to pick
21 off a piece of what public television has been doing
22 over the years and in effect try to look like the

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1 programming that is found on public television.

2 Q And do some of those channels carry actual
3 public television programming?

4 A In many cases they carry programs that are
5 no longer under license to PBS, that have expired from
6 PBS' extant rights and are now available to them.

7 Q And in your testimony you describe these
8 look alike as pale imitations of PBS. What do you
9 mean by that?

10 A Well I suggest that they are pale
11 imitations insofar as they offer only narrow segments
12 of what public television offers in whole. The number
13 of original hours of programming doesn't compare with
14 public television and those hours that are produced by
15 and large are not at the same calibre of those of
16 public televisions.

17 Q And can you find all types of programming
18 that are found on PBS on cable channels?

19 A No, I don't think so. I really -- I don't
20 believe they have -- even if you attempted to
21 aggregate many different cable channels together I
22 don't think you could put together sort or

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1 reconstitute what is public television.

2 Q And what would be missing for instance?
3 What are some examples?

4 A I think that one of the things that PBS
5 programs have that some of the cable knock-offs don't
6 is extensive amount of research that goes into our
7 programming and the fact that our programs, typically
8 if it's a documentary for instance, are vetted with
9 scholars and thoroughly pre-produced before they go
10 into production. I think that sometimes those are the
11 corners that get cut in the desire to save money on
12 production by the cable channels.

13 Q Can you find public television style
14 educational -- children's programming anywhere on
15 cable networks?

16 A There are a few sort of cases here and
17 there, but no where is there the volume of programming
18 that public television offers in a given day or the
19 quality, sort of program to program, that public
20 television offers.

21 Q How many hours of children's programming
22 does public television offer on average per day?

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1 A It varies somewhat, but I think it's
2 something like seven hours a day.

3 Q Turning to the subject of children's
4 programming, on page 31 of your testimony I believe
5 you discuss that. Could you just describe for us
6 briefly the overall philosophy of public television's
7 children's programming?

8 A It starts with a desire to have a full
9 spectrum of programming that addresses not only
10 different age groups but also different curriculum for
11 those age groups. So taken as a whole it is a -- it
12 is very much a complete diet of programming for
13 children. And it is the fact that it is educational,
14 non-commercial and non-violent that I think really
15 sets it apart from the rest.

16 Q And why would parents value access to
17 public television programming for their children?

18 A The fact that the quality is as high as it
19 is. The fact that it is non-commercial. And it's not
20 sort of driven by the commercial imperatives.

21 Q Could you describe briefly for us some of
22 the highlights of the children's programming schedule

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1 on PBS in recent years?

2 A Well recently we've --

3 Q And I understand that you are going to
4 have some discussion of future children's programming
5 a little later on.

6 A That's right. "Sesame Street" continues
7 to be the hallmark of public television children's
8 programming. But in addition that we've added a few
9 new titles over the past few years such as "Barney"
10 and "Lambchop's Play Along", "Shining Time Station"
11 and also for school age children now we've added
12 "Wishbone" which has been enormously successful in
13 terms of reaching an audience and striking a chord
14 with viewers.

15 Q What happens -- what is "Wishbone"?

16 A "Wishbone" is a relatively new series that
17 we've been airing that features the exploits of a Jack
18 Russell terrier who leads the viewers through classic
19 literature in a very fun, entertaining way.

20 Q You mention this program has sort of
21 struck a popular chord, could you describe that?

22 A We can -- the amount of mail that we get

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1 on "Wishbone" as well as E-mail that comes in through
2 our web site and just the, I understand that he is one
3 of the most popular dogs on the tour circuit right now
4 in terms of going to public places and meeting with
5 children, they just really seem to love him.

6 Q Now, on page 34, Mr. Wilson, you talk
7 about the future of PBS children's programming
8 initiatives and describe some programs or future
9 initiatives that were actually already in the pipeline
10 in the 1996 schedule. Could you describe those for us
11 briefly?

12 A Sure. Just to cite a couple, "Adventures
13 from the Book of Virtues" gives us an animated series
14 that is drawn from the best selling anthology by
15 William Bennet and it's really designed for the whole
16 family to watch together and the fact that it's
17 animated, I think, adds real extra appeal for children
18 to watch these stories.

19 "Kratt's Creatures" is a very fun and
20 different sort of wildlife series for children that
21 features the Kratt brothers who are young and
22 energetic and quite often wind up rolling in the mud

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1 with the hippos and climbing in the trees with the
2 monkeys, and kids just love it.

3 Q Now Mr. Wilson, do you have a video tape
4 segment to illustrate some of the recent children's
5 programming highlights available for us?

6 A Yes I do.

7 Q Your Honor, at this time I would ask that
8 PBS Hearing Exhibit 2 be accepted and marked for
9 identification.

10 CHAIRMAN GRIFFITH: All right.

11 (Whereupon, the above-referred
12 to video tape was marked PBS
13 Hearing Exhibit 2 for
14 identification.)

15 BY MS. WOODS:

16 Q This is another shortened version of a
17 video tape that we had included in our testimony. We
18 had originally included information on both Kratt's
19 and future -- or sort of long-standing and and newer
20 PBS programs and this segment simply highlights some
21 of the newer programs. All of the programs mentioned
22 in this video tape segment are mentioned in our

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1 testimony and most of them were on the other tape as
2 well.

3 (Whereupon, the foregoing matter went off
4 the record at 2:38 p.m.)

5 (A short video tape was played.)

6 MS. WOODS: Sorry. The sound is really
7 bad. Apparently we can't do anything about it with
8 the microphones set up in the room. So with the
9 permission of the panel, I think we'll just cut that
10 off right there. There's a lot more music that would
11 sound grating otherwise.

12 CHAIRMAN GRIFFITH: I was sort of enjoying
13 it.

14 (Laughter.)

15 MS. WOODS: Would you like to see the rest
16 of it?

17 CHAIRMAN GRIFFITH: I think that's all
18 right. I understand.

19 MR. SEIVER: I think PBS would allow you
20 to take it home.

21 DIRECT (continued)

22 BY MS. WOODS:

1 Q Mr. Wilson, just to finish up briefly on
2 PBS children's programming, does PTV Exhibit 5 offer
3 additional information on Public Television children's
4 programming?

5 A Yes. It does.

6 Q What is shown there?

7 A It's a brief listing of program titles
8 with short descriptions that represent diversity of
9 children's programming on PBS.

10 Q Now turning to page 35 of your testimony,
11 Mr. Wilson, you discuss a number of measures that
12 demonstrate the value of Public Television. Could you
13 explain to us first why it's difficult to apply the
14 measures of success in the commercial television
15 market place to Public Television?

16 A The measures of success in the commercial
17 market place are strictly used in the name if Nielsen
18 ratings and shares and that sort of thing. That
19 really is sort of a system designed to measure
20 something that Public Television does not set out to
21 achieve. Not to say that we don't use or refer to
22 audience estimates given to us by Nielsen, but to use

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1 it as the sole measure of success is really not
2 practical.

3 Q And you mentioned that it doesn't, but
4 that measure doesn't go to what Public Television is
5 trying to do. Why is that? What is Public Television
6 trying to do?

7 A Well, the Nielsens are there to assist
8 commercial broadcasters in setting their rate cards,
9 essentially, for how much their air time is worth when
10 they sell spots. That is not what Public Television
11 sets out to do. So therefore, it's not a very
12 practical measure to gauge our success.

13 Q What kind of measures would be available
14 to demonstrate the value of Public Television?

15 A I would suggest we could take a look at
16 something like as I mentioned earlier, the voluntary
17 contributions of viewers who provide financial support
18 to their Public Television station in the markets.

19 Q Just to clarify, the testimony you are
20 giving here is not about satellite viewers
21 particularly. It's not limited to satellite viewers.

22 A That's correct.

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1 Q This is talking about all donors to Public
2 Television?

3 A That's right.

4 Q Is there any way to quantify the donations
5 that were made to Public Television in 1995?

6 A In Fiscal Year 1995, I believe 4.9 million
7 households nationwide made voluntary contributions to
8 Public Television. These contributions amounted to
9 around \$312 million, which is an average contribution
10 of something like \$63 per household.

11 Q Now on page 36, you also break that down
12 into an amount paid per month. Why did you do that?

13 A Well, to get to the rate notion of a
14 monthly, what they believe a fair value for Public
15 Television is on a monthly basis. It just seemed to
16 make sense to take the \$63 average contribution and
17 divide it by 12. That comes out to something in the
18 neighborhood of \$5.25 per month.

19 Q You are not suggesting that that in itself
20 is the equivalent of a license fee. Correct?

21 A No. I think it is just one of the
22 measures that could be used to suggest how well Public

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1 Television's programming is valued.

2 Q For the most part, when people are giving
3 contributions, they are entitled to watch Public
4 Television for free? Is that correct?

5 A That's right.

6 Q Now on 37, you talk about an estimated
7 license fee that could demonstrate the value of Public
8 Television signals. Could you describe to us how this
9 shows the value of Public Television?

10 A We took a look at research that was
11 performed by Normal Hecht Research Incorporated. This
12 was prepared as a study on behalf of the National
13 Association of Broadcasters in 1993. It took a look
14 at the potential license fees that broadcast stations
15 could expect from cable operators. They were
16 essentially trying to ascertain by surveying cable
17 subscribers what value they placed on each of the
18 stations that they were receiving.

19 Q And what was the value for Public
20 Television?

21 A The cable subscribers placed a value of
22 \$2.28 per month on the -- is it per month? I believe

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1 it is.

2 Q I think that's correct.

3 A On the first Public Television signal in
4 the system, on the cable system.

5 Q And then how did that get converted to an
6 estimated license fee for Public Television signal per
7 month?

8 A We then looked at a Kagan study, which
9 essentially from Paul Kagan and Associates, that
10 interpreted the Hecht survey information and concluded
11 that the estimated license fee for the first Public
12 Television signal on that cable system was essentially
13 24 cents per subscriber. This was in 1993.

14 Q And on page 39, you provide a chart
15 projecting that license fee forward. Correct?

16 A That's right.

17 Q Can you explain to us what is shown in
18 this chart?

19 A This chart again, using Kagan data, takes
20 a look at the annual growth and average license fees
21 per subscriber per month. We project that forward.
22 Then starting with the Kagan number of 24 cents per

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1 subscriber per month in 1993, using the same annual
2 growth, project that forward to get the numbers in
3 1997, 1998, 1999.

4 Q And what are those?

5 A In 1997, it's 31 cents per subscriber per
6 month. In 1998, 33 cents, and in 1999, 34 cents.

7 Q And this entire exercise related to
8 potential cable fees, correct?

9 A That's right.

10 Q Now on page 39, you also describe the
11 critical acclaim received by Public Television. Could
12 you describe to us how that demonstrates the value of
13 Public Television programming?

14 A Well, what we often refer to the writings
15 of television critics as earned media as opposed to
16 paid media where you buy an ad in TV Guide. This is
17 media that you earn by having terrific programming
18 that TV reviewers want to write about. I think Public
19 Television programs fare very well among TV writers.
20 We often attract terrific critical acclaim.

21 Q Do you also discuss the awards won by
22 Public Television?

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1 A Yes. I do.

2 Q Could you just describe for us a little
3 bit the nature of the awards that Public Television
4 has won in recent years?

5 A Public Television programming continues to
6 attract awards from many different organizations,
7 certainly Emmys and so forth, but even prestigious
8 awards like Peabody Awards or the Dupont Columbia
9 Awards. Public Television always does very well in
10 garnering those.

11 Q Turning to Exhibits 14 and 15 of your
12 testimony, PBS's submission, do these exhibits contain
13 additional information about the awards won by Public
14 Television programming?

15 A Yes.

16 Q What is found at tab 14?

17 A Tab 14 is a listing of national awards
18 that have been received for PBS programs.

19 Q And there are actually two different items
20 there, correct? There's a one page summary?

21 A Right. Then there is a longer listing
22 that breaks out the awards by different types in terms

1 of daytime Emmy awards, prime time Emmy awards, news
2 and documentary, the Dupont Columbia, and Peabody, and
3 so forth.

4 Q Now at tab 15, what do we have there?

5 A This is a compilation of awards that have
6 been earned by not only PBS programs at the national
7 level, but local Public Television programs as well.
8 I believe the first is 1994, is what we're looking at
9 here, for programs broadcast in 1994.

10 Q That's tab A?

11 A That's correct, yes.

12 Q Then tab B is 1995?

13 A That's right.

14 Q Turning to PBS or I should probably say
15 PTV Exhibit 16. Is this an exhibit that contains some
16 of their reviews that you talked about for Public
17 Television?

18 A Yes. These are, under this tab, there are
19 reviews for a wide variety of programs that have been
20 broadcast on PBS in the last year or two.

21 Q Then what about tab 17, what's found
22 there?

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1 A Tab 17 looks at children's programming and
2 some of the terrific press we have received for our
3 kid shows.

4 Q That's for just some of the newer
5 children's program. Correct?

6 A That's right.

7 Q Tab 18 contains some reviews as well.
8 What is there?

9 A This looks specifically at the program
10 "The West" that I described. So this is one program
11 that generated a fair amount of publicity.

12 Q Turning back to your testimony, Mr.
13 Wilson, you have talked about Public Television
14 expenditures on page 41. What was the -- how much was
15 spent by the Public Television system for programming
16 and production in fiscal year 1995?

17 A About 674 million dollars.

18 Q And what was the total revenue or the
19 total cost of the programming provided through the
20 National Program Service during that time?

21 A Approximately 310 million dollars.

22 Q What portion of that was actually spent by

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1 PBS itself?

2 A Something in the neighborhood of 130
3 million dollars.

4 Q And where did the other 170 million or so
5 come from?

6 A The way Public Television programs are
7 funded, they attract their funding from myriad
8 sources. A typical rule of thumb is for every dollar
9 that PBS invests in a program, it attracts other money
10 as well that then finishes off the funding for a show.
11 This funding can come from corporations or foundations
12 or through deals where they sell off international
13 broadcast rights or something like that.

14 Q Mr. Wilson, what makes Public Television
15 programming expensive to produce?

16 A The fact that we have a very high standard
17 of quality and in order to achieve that level of
18 quality, the researching and development that goes
19 into the programs, the amount of pre-production work
20 that goes into the programs I think makes them very
21 expensive to produce.

22 Q What kind of pressure is there in Public

1 Television to obtain funding for programming?

2 A It's enormous. We are constantly seeking
3 out revenue streams that we can bring to the funding
4 mix of programs as well as entering into partnerships
5 and other arrangements in order to make our
6 programming dollars go as far as they can.

7 Q Mr. Wilson, how is the Public Television
8 funding system interdependent?

9 A It's interdependent in so far as the
10 producers of the programs, the copyright holders are
11 left with the task of finding the funding for their
12 programs. PBS gives them a share of production
13 budget, sometimes greater or lesser than others. Then
14 the producer or copyright holder has to go out and
15 find the rest of that funding through whatever sources
16 they can. It's a considerable amount of work.

17 Q When you talk about producers, that could
18 be Public Television member stations?

19 A That's right.

20 Q Mr. Wilson, does Exhibit 19 provide a
21 diagram of the flow of PBS funding?

22 A Yes. It does.

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1 Q Perhaps working with the duplication of
2 that chart here in larger form, could you just briefly
3 describe for us how that funding flow works?

4 A The majority of funding for television for
5 the PBS programs comes from the Public Television
6 stations to PBS. They pay for an annual program
7 assessment that entitles them to use the nationally
8 distributed PBS programs.

9 We do receive some funding directly from
10 the Corporation for Public Broadcasting, and the
11 Corporation for Public Broadcasting or CPB is a non-
12 profit corporation that was established to serve as a
13 funds disbursement from the Federal Government and
14 sort of as a heat shield between the stations
15 themselves and the Federal Government. But by and
16 large, the bulk of that money goes to the stations
17 from the Corporation for Public Broadcasting.

18 Q Mr. Wilson, just to sum up, where do you
19 think the panel should start in looking at the fair
20 market value of Public Television signals?

21 A I believe it is the programming that is
22 the centerpiece of where the fair market value should

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1 be established. Public Television's programming is
2 unique in that it is diverse and non-commercial. It
3 is something that the viewing public values greatly,
4 and I suspect satellite carriers would do well to
5 offer it to their subscribers.

6 MS. WOODS: Thank you very much, Mr.
7 Wilson. I have no further questions.

8 Does the Panel have questions for Mr.
9 Wilson?

10 CHAIRMAN GRIFFITH: Not at the moment, not
11 me.

12 MS. WOODS: If not, then he is now
13 available for cross examination.

14 CHAIRMAN GRIFFITH: Okay. Mr. Seiver?

15 MS. WOODS: Let me get you some water.

16 THE WITNESS: That would be great. Thank
17 you.

18 CROSS EXAMINATION

19 BY MR. SEIVER:

20 Q Good afternoon, Mr. Wilson. How are you?

21 A Fine thanks.

22 Q I am John Seiver, co-counsel for the

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1 satellite carriers in this proceeding.

2 As you come into this proceeding for the
3 first time, and not having had experience testifying,
4 I thought I would at least tell you if you don't
5 understand something I ask you, feel free to tell me
6 that. If I go into a term or an area of testimony and
7 then I go beyond your expertise or your understanding,
8 that's fine.

9 A Okay.

10 Q Just tell me. Most of my questions today
11 will focus on your testimony and some of the documents
12 that were produced in response to discovery requests.
13 Were you aware that there had been some discovery
14 requests propounded to the Public Television claimants
15 and certain documents were produced?

16 A Yes.

17 Q You participated in that production?

18 A I did to a limited extent, yes.

19 Q Would it be fair to say that the documents
20 that I received were ones where you relied on or ones
21 that you actually did look at and understand, so if I
22 give you a document from a PBS production, you'll feel

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1 comfortable talking about it?

2 (No response.)

3 MS. WOODS: Objection, Your Honor. We
4 produced a number of documents in response to requests
5 about Ms. McLaughlin as well, and this witness would
6 not have necessarily relied on those.

7 MR. SEIVER: I'm not going to try to trick
8 him. I just want to make sure that -- I guess I have
9 a reputation for trying to trick people.

10 CHAIRMAN GRIFFITH: I need not even rule.

11 MR. SEIVER: No, Your Honor.

12 CHAIRMAN GRIFFITH: Okay. Thank you.

13 BY MR. SEIVER:

14 Q Most of the copyright owners that have
15 come in here to testify have complained about the
16 compulsory license. Do you have a position on that?
17 Is that something that you are testifying about?

18 A The current compulsory?

19 Q Yes.

20 A I believe that the fair market value of
21 Public Television signal is well beyond the compulsory
22 license. As it's set now, it's six cents per

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1 subscriber.

2 Q So you are testifying that were it not for
3 the compulsory license, all the satellite carriers
4 would be paying you more money for the signal?

5 A I really don't have an opinion on that.
6 I don't know.

7 Q Do you have a position that the compulsory
8 license is a form of a Government subsidy to the
9 satellite carriers?

10 A I don't have a position on that.

11 Q As far as the compulsory license is
12 concerned, you understand it is a statute that was
13 enacted by Congress in 1988 initially?

14 A I do understand that.

15 Q For the satellite carriers. And are you
16 familiar with the rates that were established in 1988?

17 A I believe I am. That's the six cent rate,
18 is it not?

19 Q No. That was the three cent rate.

20 A Oh.

21 Q So are you aware that it was changed
22 subsequently by an arbitration panel and then

1 confirmed in a subsequent statutory amendment in 1994?

2 (No response.)

3 MS. WOODS: Objection, Your Honor. I'm
4 not sure that the witness is familiar with any of
5 this. The questions are continuing without him
6 getting a chance to respond.

7 BY MR. SEIVER:

8 Q I'm sorry. Were you aware there was
9 another arbitration prior to this one to adjust the
10 satellite rates?

11 A I guess I am, yes. I don't know to what
12 level of detail.

13 Q Were you aware that there was a statutory
14 amendment adopting those rates from 1994 going forward
15 through today? Were you aware of that?

16 A Yes, I believe I am aware of it.

17 Q That's all I wanted to know. That the
18 rate today, that has paid for Public Television on the
19 satellite compulsory license is six cents per
20 subscriber per month.

21 A That's my understanding, that's right.

22 Q Are you aware of the cable compulsory

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1 license for cable operators?

2 A Yes, but really only passingly.

3 Q So you don't have any knowledge then of
4 what cable operators pay as far as a license or
5 royalty for carrying PBS stations?

6 A No, I guess not.

7 Q And you don't know whether there's a
8 distinction between local and distant for purposes of
9 local for cable copyright payments?

10 A No.

11 Q In your testimony, I believe at one point,
12 you said, and I believe you said this during opening
13 statement in response to questions from Ms. Woods as
14 well as from your testimony, if I can find it, I was
15 going to ask you, I understand on page three to page
16 four of your testimony in the bulleted points, you
17 discuss or you mention at the bottom bullet, do you
18 see where I am?

19 "Public Television creates value by
20 investing significant amounts of money in program
21 research and development." I'll come back to that,
22 but then you say the public broadcasting system is

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1 highly interdependent, and revenue from each source,
2 including satellite retransmission compulsory license
3 fees, is vital to the well-being of the system as a
4 whole.

5 Are you not able to tell me whether or not
6 the cable compulsory license fees are vital to the
7 well being of the system as a whole?

8 A I think any revenue that we receive from
9 any source is vital.

10 Q To the extent then that the cable revenue
11 may be different from satellite revenue, you have not
12 made a judgement as to whether it should be higher or
13 lower or the same?

14 A If I get to choose, I would pick higher.

15 Q Very well. I should also understand, you
16 are not an economist, am I right?

17 A I'm sorry?

18 Q You are not an economist.

19 A That is correct.

20 Q And your testimony is not of an economic
21 nature of telling this panel what the fair market
22 value of a secondary transmission is. Am I correct?

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1 A From an economist point of view, no.

2 Q You have actually stated I believe in your
3 testimony, that you talk about the fair market value
4 in the bullet above the one we were talking on page
5 three. You say suggests that the fair market value of
6 Public Television is far higher than what satellite
7 operators now pay.

8 A Yes.

9 Q I wanted to understand what you meant as
10 to the fair market value of Public Television. Is
11 that a general sense, specific signals, specific
12 programs? What do you mean by that?

13 A Public Television in the most general
14 sense in terms of the signals that would be
15 retransmitted is what I meant by that. I mean as a
16 whole.

17 Q As it stands now in your chart, and I'll
18 use this also as a technical chart, Public Television
19 stations, there are about 300 around the country, is
20 that right?

21 A It's 145, I think something like that.

22 Q Operate in a similar way to network

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1 affiliates, of the commercial networks, in the fact
2 that they get programming from a central source and
3 show it?

4 A It's actually not at all like the way
5 network affiliates work.

6 Q There is no similarity at all?

7 A I would say the differences outweigh the
8 similarities to such an extent that you would be hard
9 pressed to suggest that it's similar in nature.

10 Q There is programming though that's
11 produced centrally through PBS, which is then supplied
12 to these Public Television stations?

13 A PBS actually doesn't produce any
14 programming.

15 Q They provide the funds?

16 A We distribute programming, that's right.

17 Q I'm sorry. You don't provide the
18 programming, you distribute it? Is there a
19 difference?

20 (No response.)

21 MS. WOODS: Objection, Your Honor. I
22 believe he's saying PBS didn't produce the programs.

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1 MR. SEIVER: Oh, I misunderstood. You
2 don't produce it.

3 CHAIRMAN GRIFFITH: PBS does not produce.

4 BY MR. SEIVER:

5 Q It just funds the production of
6 programming?

7 A We rely on producing stations and
8 independent producers.

9 Q And CPB, if I may call it that, provides
10 funds to PBS as well. Right?

11 A That's right.

12 Q Is that the only source of funds for PBS?

13 A No. As I said earlier, the single largest
14 source of funds comes directly from Public Television
15 stations.

16 Q And the Public Television stations get
17 their funds from both the viewers which were you
18 talking about before, as well as corporations,
19 foundations, and the state. Does that mean like a
20 state government?

21 A That's right.

22 Q So we have the Federal Government making

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1 a contribution. Do you know what the annual
2 contribution is from the Federal Government?

3 A The Federal Government's contribution is
4 something in the neighborhood of 14 percent of Public
5 Television's overall revenue.

6 Q Can you give me some numbers on that?

7 A I am drawing a blank on the appropriation,
8 I'm sorry.

9 Q Let me just ask you, have you ever looked
10 at the web page for public broadcasting?

11 A This is www.pbs.org?

12 Q I think that might be it.

13 A I have looked at that.

14 MR. SEIVER: I would like to mark as our
15 next Exhibit, is it 19X?

16 (Whereupon, the document was
17 marked for identification as
18 Exhibit No. SBCA 19-X.)

19 MS. WOODS: Your Honor, if I may just
20 object to the characterization of the exhibit at this
21 point. This is obviously not from www.pbs.org. This
22 is a document from CPB.

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1 MR. SEIVER: I'm sorry.

2 MS. WOODS: I don't know if Mr. Wilson has
3 seen it, but it's not a PBS document.

4 CHAIRMAN GRIFFITH: All right.

5 THE WITNESS: I would have to change my
6 answer. I have not looked at CPB's home page.

7 BY MR. SEIVER:

8 Q That's what I meant. I made a mistake.
9 I apologize for that.

10 There's a mention in the third paragraph
11 that CPB received a 285 million dollar federal
12 appropriation for fiscal year 1995. Is that a number
13 that you are familiar with?

14 A That sounds accurate, yes.

15 Q Now the funding from CPB then flows to
16 both PBS, who pays for programs to be provided, as
17 well as to the PTB stations, the Public Television
18 stations themselves. Approximately another \$300
19 million you said was raised thereabouts by the
20 stations from the viewers in the contributions?

21 A That's right.

22 Q And do you know how much corporations or

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1 the foundations or the state, the other arrow that you
2 have got into PTB stations contributed?

3 A I don't have that number.

4 Q Now when you tell us that the revenues
5 that you get are vital, I presume you also mean the
6 Government funding as well as viewers' contributions
7 and anything from corporations or foundations are also
8 vital?

9 A All sources.

10 Q You said that it is not advertiser
11 supported though, the programming that actually is
12 shown by the PTB stations. Am I right?

13 (No response.)

14 MS. WOODS: Objection, Your Honor. I
15 don't believe Mr. Wilson ever said the programming was
16 not advertiser supported, in those words.

17 MR. SEIVER: Oh, I'm sorry. I was trying
18 to characterize it. I don't remember his exact words.

19 CHAIRMAN GRIFFITH: Did you testify to
20 that, sir, or not?

21 THE WITNESS: I don't recall using that
22 phrase. Public Television is non-commercial.

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1 BY MR. SEIVER:

2 Q Okay. It's non-commercial. So there are
3 advertisers on Public Television?

4 (No response.)

5 MS. WOODS: Objection, Your Honor. Non-
6 commercial, certainly in terms of communications law
7 is a fairly technical term, so that there are certain
8 requirements of the FCC as to what sort of not
9 advertising, but acknowledgements can appear on the
10 programming. I just want to make sure that you are
11 all talking about the same thing here.

12 MR. SEIVER: That's exactly what I'm
13 talking about.

14 BY MR. SEIVER:

15 Q So tell me in your own words, so I don't
16 have any more objections, what exactly do you mean
17 when you say it's non-commercial?

18 A I mean to say that it is by definition
19 there is a separation between the editorial control of
20 the programs from the influence of the funders, even
21 the perceived influence of the funders over the
22 editorial control of the product.

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1 Q Are there corporations that are private
2 corporations that provide funds to the Public
3 Television stations that are neither Federal
4 Government nor the CPB?

5 A Yes.

6 Q And under what circumstances do those
7 corporations, and I presume these are publicly traded,
8 commercial operated companies, provide funds to the
9 PTB stations?

10 A They provide funds typically in the form
11 of underwriting of the television programs.

12 Q Is there a term that's known as
13 sponsorship? Does that sound familiar to you?

14 A Yes.

15 Q And do these particular corporations get
16 any credit or I'm sorry, delete that. How do the
17 sponsors get credit for the contributions they make to
18 PTB?

19 A We are required to acknowledge all sources
20 of funding for our programming. So in so doing, we
21 acknowledge the contributions of corporations,
22 foundations, and other sources.

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1 Q During the course of your testimony, did
2 you ever discuss the number of minutes that are
3 devoted to acknowledging the sponsorships? Do you
4 recall?

5 A I know in here there is reference to non-
6 program minutes, but I don't know that it specifically
7 breaks out the number of minutes spent on
8 acknowledging corporate support.

9 Q You don't know what the number of minutes
10 are compared to the number of minutes of ads that
11 appear on commercial televisions that are non-program
12 minutes?

13 A I think in here I gave testimony about the
14 amount of time spent on Public Television in terms of
15 non-program minutes compared to the non-program
16 minutes in a commercial hour of television.

17 Q I am having trouble, I thought I had it
18 marked, the page. Can you help me out on that page
19 number? I remember it being at the top.

20 (No response.)

21 MS. WOODS: It's 23.

22 MR. SEIVER: Thank you.

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1 MS. WOODS: The bottom of '22.

2 BY MR. SEIVER:

3 Q You state that the commercial broadcast
4 stations, 18 and a half minutes of advertising per
5 hour of daytime, and 14.2 minutes of advertising per
6 hour of prime time. In contrast, on average Public
7 Television has only 5.6 non-programming minutes per
8 hour, including sponsorship identification. They
9 never interrupt a program.

10 What other non-program minutes per hour
11 are included? What kinds of items are besides
12 sponsorship identification are included in the 5.6
13 minutes?

14 A Announcements that will tell you about
15 upcoming programs, promos we would call those.
16 Community announcements, institutional spots that tell
17 about the services of Public Television.

18 Q Are sponsors that provide the funds to PTB
19 as well as the sponsors that are identified interested
20 in having their name identified with Public
21 Television, to your knowledge?

22 A Yes. I believe they think it's a good

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1 thing to be associated with Public Television.

2 Q So in a sense, they are interested in
3 having the maximum number of viewers see themselves
4 being identified as a sponsor for the programming?

5 A I suspect they would appreciate having as
6 many people as possible be aware of that.

7 Q So in that sense, at least, the maximizing
8 the number of viewers, Public Television has a similar
9 interest in getting its signal out to everybody as do
10 the commercial networks.

11 A Well getting its signal out to everybody
12 is certainly a priority for Public Television. We
13 believe that access to the signal should be wide and
14 that I believe we are receivable in 99 percent of U.S.
15 television households. But I don't agree with the
16 characterization that it's similar in terms of a cost
17 per thousand sort of market place where we're trying
18 to bring as many viewers as possible to satisfy the
19 needs of the underwriters. That's not what we're out
20 for. Frankly, it's not what we hear from
21 underwriters.

22 Q Well, as you understand it, I know you are

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1 not an economist, but the business of Public
2 Television is quite different, the source of funds
3 especially than the business of commercial television.

4 A Indeed.

5 Q Whereas commercial television relies
6 almost entirely on advertising revenue, you get it
7 from sponsorship, viewers, and the Federal Government.

8 A That's to simplify, yes.

9 Q So I also understand then, you testified
10 I believe that the relationship between CPB and the
11 PTB stations are a little different than the networks
12 and their affiliates in the way transactions occur.
13 I believe you mentioned that the commercial networks
14 make payments to their affiliates, the broadcast
15 affiliates?

16 (No response.)

17 MS. WOODS: Objection, Your Honor. If I
18 could just clarify for the record. I had understood
19 him to be testifying regarding PBS and the member
20 stations, as opposed to CPB and the member stations.

21 MR. SEIVER: I'm sorry. I didn't mean to
22 confuse him. He wouldn't let me confuse him, I don't

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1 think.

2 BY MR. SEIVER:

3 Q If I stated that wrong, is it between PBS
4 and the stations that the relationship that you were
5 discussing was contrasted with the commercial networks
6 and their affiliates?

7 A That is correct. The difference that you
8 point out in terms of the sort of simple money flow is
9 one of those points of difference.

10 Q So the public stations pay PBS? They send
11 money to PBS?

12 A Yes. The member stations send money to
13 PBS for the programming.

14 Q And the programming, is there a particular
15 dollar value per subscriber or how is that programming
16 valued for the transactions between the two?

17 A First we set a national budget, a budget
18 for the national program service programming, which is
19 put forward to our board, which is an elected board
20 that has member station representatives as well as lay
21 representatives. The membership of stations get to
22 comment on the budget as it goes through that process.

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1 The budget is approved. Then a fairly complex
2 formulation is done that establishes what each Public
3 Television station's share of that national program
4 assessment would be.

5 Q So this is not like a market value
6 negotiation type situation? This is all -- you are
7 not buying and selling as much as you are trying to
8 allocate?

9 A That's right. Try to aggregate as much
10 funding as possible in the national programming.

11 Q Now you yourself, when I say you, I mean
12 and straighten me out, because Ms. Woods will object,
13 do not sell programming to the satellite carriers. Is
14 that right? You being PBS. You just sell to your
15 broadcast affiliates. You don't sell to the satellite
16 carriers?

17 (No response.)

18 MS. WOODS: Objection, Your Honor. We
19 have had numerous --

20 MR. SEIVER: I'm sorry. You provide
21 programming to the --

22 MS. WOODS: Member stations.

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1 BY MR. SEIVER:

2 Q To the member stations. You do not sell
3 programming, I guess to that matter, to anybody. Is
4 that right?

5 A We provide programming to our member
6 stations. That's correct.

7 Q You do not provide programming directly to
8 the satellite carriers?

9 A No.

10 Q They pick up the signal off air of one of
11 the PTB stations?

12 A That's correct.

13 Q Do you also have a satellite system that
14 is either owned or operated by PBS?

15 A We have a share of transponders on a given
16 satellite, or at least we did until a couple of months
17 ago.

18 Q Was there a problem?

19 A There was a small problem.

20 Q Have you switched to another satellite?

21 A We are on another satellite, and looking
22 for more.

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1 Q Is that programming -- is that how you
2 deliver programming to your --

3 A To our member stations, yes. That's
4 right.

5 Q Is that programming scrambled?

6 A Yes. It is.

7 Q We marked as an exhibit recently -- have
8 you ever seen a magazine called Orbit Magazine?

9 A I don't know that I have.

10 Q Currently, do you know what satellite PBS
11 is currently on? Is it Telstar 402R? Does that sound
12 right?

13 A That sounds right, but I'm frankly not an
14 expert in that regard.

15 MR. SEIVER: This was Exhibit 15 -- 13X.

16 MS. WOODS: Do you have an extra or should
17 I go back and get one? 13X?

18 MR. SEIVER: 13X. If I could give it to
19 you and I'll just give this one to the witness.

20 The Panel, it's going to be just a moment.

21 If I may approach you and show this to you.

22 BY MR. SEIVER:

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1 Q Is the March 1997 satellite TV c-band
2 channels where it has T4 is Telstar 402R. If you go
3 down to I had channel 17, it says PBS.

4 A I believe it's channel 18.

5 Q I'm sorry, channel 18. It's shaded in the
6 blue color. The bottom --

7 (No response.)

8 MS. WOODS: Excuse me. We don't have a
9 blue color.

10 MR. SEIVER: I'm sorry. I am having him
11 explain it.

12 BY MR. SEIVER:

13 Q It says in that blue color it says equals
14 free. On the backside where it has major networks,
15 again there's a mention of PBS and it shows T4-18, 24
16 hours. It does not have the little asterisk, I mean
17 the little diamond next to it which we determined
18 means VCII plus subscription channel.

19 Now that I have shown that to you, does
20 that indicate that it is in the clear on that
21 particular c-band?

22 A On that particular c-band feed is a clear

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1 feed.

2 Q So anyone with a c-band satellite dish
3 could pick up the programming on that PBS program
4 free?

5 A That's right.

6 Q Do you leave it unscrambled for the ease
7 of your stations or for the ease of c-band viewers?

8 A We leave it unscrambled I believe by act
9 of Congress, that we are to have a clear feed to
10 America's backyard dish owners.

11 Q Now you had gone through with Ms. Woods
12 about the contributions that you receive. When I say
13 you, the member stations from viewers. I believe you
14 had given some calculations that I want to ask you
15 about that had come in discovery.

16 (No response.)

17 MR. SEIVER: I would like to have marked
18 as Exhibit 20X, a two-page document bearing PBS
19 production numbers 0147 and 0148.

20 (Whereupon, the document was
21 marked for identification as
22 Exhibit No. SBCA 20-X.)

1 BY MR. SEIVER:

2 Q Let me show you this, Exhibit 20-X, and
3 ask you if this is a document, an excerpt of a
4 document that you have seen before?

5 A This appears to be a CPB generated
6 document.

7 Q Is this the document that you would have
8 relied on to make your statement concerning the amount
9 of contributions of the number of contributors, the
10 per person contribution? You can look, page 36 of
11 your testimony is where you have set it out, if that's
12 a help to you.

13 A Yes.

14 Q Now, you've said you -- that a significant
15 number of viewers willingly paid the equivalent and
16 that significant numbers just under 5 million, is that
17 right? 4.9 million that you had mentioned and
18 4,938,000 that's in the exhibit?

19 A That's correct.

20 Q And that you already reached 99 percent of
21 the television households in the country. Do you know
22 what the total number of television households are?

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1 A In the United States?

2 Q Yes.

3 A Just to make the math easy I always think
4 of it in terms of approximately 100 million.

5 Q We've been using 97 million.

6 A Okay.

7 Q I'll use the 97 million. And do you need
8 a calculator? I was going to ask you to take the
9 4,938,000 and compare that to the 97 million so we
10 could know what percentage of viewers contribute?

11 I think you can almost do it in your head.

12 A It's almost 5 percent. I'm guessing.

13 Q So 5 percent of the viewers have given
14 this amount of money. Is it fair to draw the
15 inference that 95 percent of the viewers have not
16 given money?

17 MS. WOODS: Excuse me, Your Honor, just to
18 clarify the record here. We're talking about 5
19 percent of the viewers. There's been no testimony
20 that 99 percent of the TV households are actually
21 viewers.

22 THE WITNESS: Also that's this 4.9 million

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1 in a single year and it's hard to suggest given the
2 share in contributions how many households have
3 contributed over what period of time. I suggest that
4 number is far larger.

5 BY MR. SEIVER:

6 Q I thought you had said it was 4.9 million
7 households, but it's the number of contributors and it
8 could change from year to year.

9 A It was fiscal year 95 so we're speaking
10 about specifically.

11 Q Now do you know, your signal, in addition
12 to being on the Telstar and the clear is also -- when
13 I say your signal -- start over.

14 In addition to the PBS programming that's
15 on the clear, in the clear on Telstar, two PBS
16 stations are uplinked and distributed to C-band and
17 high power satellite subscribers, am I right?

18 A I believe that's correct.

19 Q And one of them is WHYY out of
20 Philadelphia?

21 A Philadelphia.

22 Q And that's up on the Prime Star service.

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1 You've heard of Prime Star?

2 A Uh-huh.

3 Q Do you know how many subscribers of the
4 Prime Star service there are that receive the signal
5 of WHYY?

6 A I don't know that.

7 Q I'll ask you to accept subject to check,
8 but it's in the neighborhood of 800,000 from their
9 copyright statement.

10 Also, you were aware that KRMA from Denver
11 is also uplinked and distributed as a C-band market?

12 A Yes, I am.

13 Q And that's by a company called Netlink?

14 A That's right.

15 Q And I'll tell you both Netlink and Prime
16 Star are represented by Satellite Carriers on this
17 side of the room here and do you know what the
18 approximate number of people that receive the DBS
19 signal from KRMA from Netlink?

20 A No, I don't.

21 Q I'll ask you to accept subject to check
22 that it's 579,000, approximately.

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1 A Okay

2 Q I wanted to add that up to come up with
3 about 1.3 million satellite subs. or subscribers that
4 are receiving the KMRA and the WHYH programming.

5 Would it be fair to say that when you were
6 responding to Ms. Woods' question that contributions
7 from viewers include contributions from satellite
8 viewers?

9 A There's a possibility of that.

10 Q Do you believe that they contribute at the
11 same rate that the nonsatellite viewers do?

12 A I really don't have any way to make that
13 judgment.

14 Q Would it be a fair calculation to use the
15 fact that 5 percent of the total television households
16 contribute to say that maybe 5 percent of the total
17 satellite viewing households also contribute?

18 A I don't think I'd be prepared to concede
19 that.

20 Q You mean you think it might be more?

21 A I have no way of knowing. My guess, if
22 that's what I'm being asked to do would be that it

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1 would be more, but --

2 Q And with each household, if we just used
3 5 percent then let's say as a floor of the 1.3 million
4 subscribers, that would be -- you can check, I come
5 out to 65 --

6 MS. WOODS: Objection, Your Honor, the 5
7 percent was of the total -- we brought this up before,
8 was of the total television households in the United
9 States, not of the viewers. We're not comparing the
10 same numbers here. It's totally inappropriate.

11 MR. SEIVER: Well, I didn't mean of the
12 viewers. I meant of the satellite households. I'm
13 not saying that all 1.3 million view --

14 JUDGE GULIN: You're just picking a 5
15 percent arbitrary figure?

16 Are you using ordinates?

17 MR. SEIVER: I was trying to establish
18 that of the 5 million, there are 5 million
19 contributors and 97 million television households,
20 totally and assuming that that relationship is
21 meaningful, if there's 1.3 million satellite
22 households that the 5 percent -- I'm just trying to

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1 back out how many of that 4.9 million would be
2 satellite households. So that's why I took the 5
3 percent of that to come up with 65,000.

4 JUDGE GULIN: The objection is sustained.

5 MR. SEIVER: Your Honor, if I might, I'd
6 like to make a proffer on this issue because I want to
7 explain where I was going.

8 I was using the witness's testimony and
9 the charts of what I believe was the relative figure
10 of 5 percent of total television households that
11 contributed money to PBS, assuming from the satellite
12 statement of account that we had 1.3 million satellite
13 subscribers and that 5 percent of those total
14 subscribers, not viewers, but subscribers would
15 contribute, that we would have a number of 65,000
16 approximately satellite subscribers that would be
17 sending money to public television. That 65,000
18 subscribers if I was allowed to continue, I would have
19 multiplied out by the \$63.15 a year to show that the
20 satellite subscribers are providing a revenue stream
21 to public television of approximately \$4 million a
22 year. And if, in fact, we have \$4 million a year,

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1 that really could be looked at two different ways.
2 The first way was as a total amount spread out over
3 all the satellite subscribers of 1.3 million, my
4 calculation shows that it comes out to about 26 cents
5 per month per satellite subscriber, not viewer, but
6 per subscriber, if you take the -- because it was \$5
7 a month for the 5 percent. It's just the way the math
8 works out. And if I were continuing to go, I would
9 say don't you then receive approximately on account of
10 the satellite distribution of your signal
11 approximately 26 cents per subscriber per month.

12 JUDGE GULIN: All right, the proffer is
13 received and recorded. The objection is sustained.

14 MR. SEIVER: Thank you.

15 CHAIRMAN GRIFFITH: Wait just a moment,
16 please.

17 (Pause.)

18 CHAIRMAN GRIFFITH: We were just
19 discussing the fact that we're assuming -- trying to
20 come up with hypothetical but I mean you can assume
21 anything, so the objection is sustained.

22 MR. SEIVER: I would enjoy a debate over

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1 that, but I will take the ruling and I made my
2 proffer. Thank you.

3 CHAIRMAN GRIFFITH: All right. I think
4 it's time for our afternoon recess. All right, why
5 don't we -- 12 to 13 minutes this time.

6 (Off the record.)

7 MR. SEIVER: May I proceed?

8 CHAIRMAN GRIFFITH: Mr. Seiver, yes

9 BY MR. SEIVER:

10 Q Mr. Wilson, will you look at page 5 of
11 your testimony?

12 I'm mostly interested in starting in the
13 middle of the page. I think you had talked about some
14 -- Ms. Woods in direct about some imitators, including
15 various cable networks to try to replicate and profit
16 from certain types of programming first developed by
17 public television.

18 What did you mean when you said "replicate
19 and profit certain types of programming"? Were you
20 referring to particular programs or particular
21 networks?

22 A The profit from it I think is fairly

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1 straight forward. These are private corporations that
2 seek to make a profit from their endeavors so I
3 suggest that's what that is. In terms of replicate,
4 these are what we call niche programming services who
5 essentially pick off one sort of narrow band width of
6 programming that public television offers and take
7 that very narrowly defined bit of programming and make
8 an entire cable channel out of it, replicate that type
9 of programming.

10 Q The public television itself, I think you
11 testified also, does provide niche programming itself,
12 doesn't it?

13 A The subject areas that make up all of
14 public television are in effect niches, yes.

15 Q Because further down you say they can
16 never -- talking about now cable networks, they can
17 never match PTV in terms of providing important quote
18 "niche" programming that may be of particular interest
19 to groups of avid viewers, even if it does not
20 generate "mass" audiences, so as I understand it you
21 provide niche programming and some other cable
22 networks you think have tried to knock off some of

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1 those niches and then sell it?

2 A Yes.

3 Q Public television right now does not sell
4 programming to the public?

5 A Does not sell its programming to the
6 public, how do you mean?

7 Q Well, there's no charge for a viewer of a
8 public television station to see that particular
9 signal?

10 A That's correct.

11 Q And had you when you talked about the
12 contributions had you ever made any analysis, with
13 your experience, ever made an analysis of whether
14 public television viewers if they were being charged
15 a fee would continue to send money voluntarily to the
16 public television station?

17 A I've never made that analysis.

18 Q You also talk about the cable networks to
19 the extent that -- let me go back first to the middle
20 of the paragraph. You said it would be to the benefit
21 of the American people of public television dash style
22 programming were more widely available and do you mean

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1 that public television style programming is available
2 elsewhere other than on public television?

3 A Well, certainly in the old public
4 television shows that are now available in syndication
5 that many of these cable channels have picked up, it's
6 available.

7 Q Now did the cable channels pay for those
8 old programs in syndication?

9 A That would be my understanding, yes.

10 Q So in the sense that they're replicating
11 and profiting from it at least PBS is profiting by
12 having sold those syndications, right?

13 MS. WOODS: Objection, Your Honor, there's
14 been no evidence shown that any payment is being made
15 to PBS in these programs.

16 CHAIRMAN GRIFFITH: Do you withdraw that?

17 MR. SEIVER: I withdrawn that. I
18 misspoke.

19 BY MR. SEIVER:

20 Q Are there program suppliers permitted
21 after a certain number of runs to then sell the
22 programming to others?

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1 A PBS, the contracts for a given period of
2 time and a given number of releases of a program, at
3 the end of that time we can renew the program and
4 enter into another contract period or the program can
5 leave PBS' distribution and go elsewhere.

6 Q So it's a conscious decision on the part
7 of PBS if it wants to maintain the exclusivity or not
8 vis-a-vis the cable networks?

9 A Yes, to the extent that we have the
10 wherewithal to hang on to the programs.

11 Q Is there a bit of a bidding war do you
12 think between PBS and the cable networks?

13 A There is always the challenge of having a
14 limited amount of resources and unlimited amount of
15 opportunities to use those resources.

16 Q So is it your testimony then that to the
17 extent that both public television and maybe some of
18 these other networks that buy reruns of public
19 television programs would be beneficial to the
20 American people if these programs were more widely
21 available?

22 A Yes, I think it's a good thing that PBS

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1 programs are available.

2 Q And to your understanding do you know if
3 the satellite viewers or the satellite viewers are
4 generally at least in this country would fall within
5 your category of American people who would benefit,
6 right?

7 A That would be my understanding. I want to
8 make sure I didn't mischaracterize it.

9 Q And we had talked about the C-band and DBS
10 modes of delivery the lower power and the higher power
11 niches. You understand the DBS is the smaller dish.

12 A Uh-huh.

13 Q Do you think it would be a benefit that
14 the DBS dish owners would have access to public
15 television programming?

16 A Yes.

17 Q And so would it be of benefit if, in fact,
18 the particular satellite carrier that's providing DBS
19 programming gets the signal from a PTV station and
20 uplinks it and distributes it to the subscribers?

21 A I think that would be a benefit to the
22 satellite carrier and to the viewer.

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1 Q And to the viewer. One advantage to the
2 satellite, I mean to the public television is getting
3 the programming out to more people that would be
4 interested in viewing, is that right? I mean that's
5 one of your missions to maximize the number of
6 viewers. And are you aware of the digital quality or
7 the digital nature of the programming that DBS
8 provides?

9 A Yes.

10 Q And to your understanding is that a higher
11 quality than the analog signals?

12 A Sum total.

13 Q Have you seen it?

14 A I have seen displays of DBS signals.

15 Q Have you seen any of the electronic
16 program guides that some of DBS operators have?

17 A I believe I have. It was some time ago.

18 Q You did an analysis in your testimony here
19 of the comparability of the cable networks to the
20 extent that you said that they'll never be like you or
21 they can never match you in the terms of providing
22 niche programming because 40 percent of their revenues

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1 are derived from advertising?

2 A Uh-huh.

3 Q And why does the fact of the receipt of
4 advertising mean they can never match you?

5 A I think it is fundamental to a program
6 provider as to whether or not they have a commercial
7 imperative or not and I suggest that if they do that
8 that greatly alters their perspective and their reason
9 for being.

10 Q Does the amount of the then advertising
11 revenues you think is a direct proportional
12 relationship to the amount of influence that they --
13 the entity receiving those revenues is under?

14 A I wouldn't know how to gauge that.

15 Q Are you aware of what the percentage of
16 revenues are that the commercial networks receive from
17 advertising?

18 A I don't have that number.

19 Q You don't know whether it's more or less
20 than 40 percent?

21 A I don't. I suspect it's more.

22 Q On page 6 of your testimony -- I'll wait.

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1 (Pause.)

2 You talk about Ms. McLaughlin's license
3 fees, calculations. Are you familiar with how she
4 calculated her license fees?

5 A I am.

6 Q And you're also familiar with the way that
7 you calculated your license fees, I presume and your
8 testimony?

9 A I am.

10 Q Your statement here though is that
11 retransmitted PTB signals, in fact, have a value to
12 satellite operators that substantially exceeds what
13 they pay to carry many cable networks? You say that's
14 based on what you said above and what you're going to
15 say below.

16 Now we've already established that the
17 cable networks derive advertising revenues which you
18 think is a problem for them in matching you as far as
19 niche programming. Are there other items that you
20 think distinguish the cable networks from you?

21 A I believe the fact that public television
22 has as wide a variety of programming as it does makes

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1 it a single source of programming across many
2 different subject areas and age groups and interests
3 that no single cable program provider can match.

4 Q On page 21, you say there are at least
5 three overriding ways that it's distinct public
6 television programming is distinct from commercial
7 broadcasting than cable networks and first you list
8 the unique commitment to educational programming at
9 all levels?

10 A Uh-huh.

11 Q And then second you say it's noncommercial
12 and does not depend on advertising revenues for its
13 support. I trust that's a variation on what we were
14 just talking about on the niche programming side?

15 A Right.

16 Q And third that your programming,
17 especially programming for children is not violent.
18 Given that, your calculation of license fees that you
19 do at the end of your testimony is entirely based on
20 cable network license fees that you examined. Is
21 there some sort of disconnection between the two?

22 A I don't think so. In following the

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1 provisions of the statute we looked to the competitive
2 environment and it seemed that that was the only fair
3 place for us to turn to make that analogy.

4 Q Well, you had already said that the cable
5 networks derive 40 percent of their revenues from
6 advertising which is a very different way of deriving
7 revenues than public television. Am I right?

8 A That's correct.

9 Q And do you understand that the cable
10 networks also when they derive revenues from
11 advertising also share some of those revenues or
12 provide advertising availabilities to cable operators?

13 A I'll take your word for it.

14 Q So you didn't do any analysis of whether
15 or not a cable operator who pays a particular license
16 fee to a programmer also may receive funds back from
17 that programmer in the sense of having advertising
18 availabilities provided to it on the cable networks?

19 A What was the question?

20 Q I'm sorry. I'll ask you to accept that
21 there is a term that's commonly used called ad avails.
22 and that cable networks some make available to cable

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1 operators the opportunity to use those ad
2 availabilities.

3 A Right.

4 Q For their own gain when they're also
5 paying a license fee to the network and I'm asking you
6 to assume that that means there's some money that is
7 gained by the cable operator by virtue of advertising
8 revenues from carrying that network and given that,
9 had you made an analysis when you were doing your
10 calculation that the license fee that may be purported
11 by Kagan could be reduced by the fact that the cable
12 operator then earns some additional money from
13 carrying that network from its ads? You did not make
14 any such reduction, did you?

15 A You are correct.

16 Q So if we look at the calculation that you
17 did on page -- you concluded -- I guess it's 37.
18 You actually had used a publication from Kagan to come
19 up with the numbers that you used. Is that right?

20 MS. WOODS: Objection, Your Honor. The
21 numbers on page 37 are most of those from Norman Hecht
22 and that has to do with the value placed on public

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1 television.

2 CHAIRMAN GRIFFITH: Kagan numbers are on
3 page 38, I believe.

4 MR. SEIVER: I'm sorry, on page 38, the
5 Kagan study.

6 By MR. SEIVER:

7 Q But to the extent that on the bottom of
8 page 37 you gave the \$2.28 figure that was from Norman
9 Hecht, is that right?

10 A That's correct.

11 Q And -- but you used that \$2.28 figure from
12 Norman Hecht in conjunction with Kagan numbers to make
13 an estimate of your license fees. Am I right?

14 A That is correct.

15 Q I just want to make sure I get this
16 straight.

17 I'd like to mark as our next exhibit 21X.

18 (The document referred to was
19 marked for identification as
20 Exhibit No. SBCA 21-X.)

21 I'd like to have you look at what's been
22 marked as Carriers Exhibit 21X and I apologize for any

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1 errors in copying. I'll blame that entirely on Ms.
2 Woods.

3 MR. GARRETT: Your Honor, can I just have
4 a clarification as to the date of the article here?

5 MR. SEIVER: I have the same problem. I'm
6 relying on what was in testimony about April '93, so
7 I'm assuming that's April 30, 1993 that ran off the
8 page.

9 MR. GARRETT: Thank you.

10 By MR. SEIVER:

11 Q Now attached to this first two pages of
12 the April 1993 issue I've attached to it because it
13 was the way it was provided, two more pages from
14 September, the September 30, 1995 issue, pages PBS
15 0151 and 0152. Do you see that?

16 Is it fair to say that this is a document
17 that the second two pages are the document you relied
18 on when you were doing your calculations?

19 MS. WOODS: Excuse me, when you say the
20 second two pages, what do you mean?

21 MR. SEIVER: The first two pages are 0149
22 and 0150. I'm assuming they're the April 1993 issue.

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1 0151 has a different date so I'm assuming that those
2 second two pages are from the september 30, 1995 issue
3 as opposed to the April 1993 issue.

4 MS. WOODS: Right.

5 MR. SEIVER: Am I okay?

6 MS. WOODS: Uh-huh.

7 MR. SEIVER: Thanks.

8 BY MR. SEIVER:

9 Q I just want to know if the witness
10 recognizes this since this was produced by PBS in
11 response to document requests concerning your
12 testimony.

13 A I recognize it. What was the question?

14 Q That was my question at this point.

15 A Okay.

16 Q Did you use the calculations in the box
17 where it says license fees for \$1 assigned a consumer
18 value, do you see that? Did you use those
19 calculations to come up with this rate, I believe, it
20 was \$.11 per \$1 "value"?

21 A Yes.

22 Q Let me give you your calculation page if

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1 I may.

2 MS. WOODS: Objection, Your Honor. I just
3 -- perhaps just to clarify the record, it's Kagan who
4 uses the \$.11 fee, who arrives at the \$.11 fee here.

5 MR. SEIVER: I just asked him if he used
6 the \$.11 fee in his calculations. I thought he said
7 yes.

8 CHAIRMAN GRIFFITH: That's what he said.

9 By MR. SEIVER:

10 Q I'd like to mark as 22X a one page
11 document, PBS 0153. Take a look at that Mr. Wilson.

12 (The document referred to was
13 marked for identification as
14 Exhibit No. SBCA 22-X.)

15 So we can have it straight, is this the
16 document that you -- that reflects the calculations of
17 the license fees that you then entered in the box on
18 page 39?

19 A Yes, that's right.

20 Q So if I may understand it, this value
21 survey was used to determine that PBS subscribers
22 place a value of \$2.28 or allocate \$2.28 of their

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1 cable bill to the PBS programming?

2 MS. WOODS: Objection, Your Honor. It
3 wasn't PBS subscribers.

4 BY MR. SEIVER:

5 Q Well, I'm going to stop questioning the
6 witness in a leading way and say will you tell us what
7 you did and on page 37 where you explain that you
8 calculated your estimated license fee.

9 A Okay. Using the -- going back to the
10 Norman Hecht research which asked cable subscribers to
11 assign a value to the broadcast signals that they
12 receive and then to allocate a portion of the monthly
13 cable bill to those signals, the cable subscribers
14 placed a value of \$2.28 on the first public television
15 signal on the system. Then taking that number, the
16 \$2.28 number and taking a look at the report that Paul
17 Kagan issued in April of 1993, in which the NAB
18 survey, the value survey is multiplied against this
19 \$.11 per \$1 value average is how we wound up with our
20 \$.24 for 1993.

21 Q So that's in that second box where it says
22 "equivalent" license fee calculation?

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1 A Right.

2 Q The second line is PBS, that's the
3 calculation that you used?

4 A That's correct.

5 Q And then for purposes of your box on page
6 39, you tried to extend out over the years from 1993,
7 I guess, an inflation adjustment or expectation as
8 fees would go up?

9 A Based on annual growth and average license
10 fees per subscriber per month.

11 Q Now did you do any independent evaluation
12 yourself as to the accuracy of the \$2.28 figure that
13 was part of the NAB value survey?

14 A No, I did not.

15 Q And did you see that in the Paul Kagan
16 article that there is a sentence in the third full
17 paragraph, second sentence, "Cable observers question
18 the survey methodology (one totaled the individual
19 values exceeded the average cable bill); but the
20 intriguing aspect was the high value assigned to
21 various cable networks" and there's another
22 parenthetical "(CNN was valued at \$2.82)".

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1 Did you make any effort to determine
2 whether or not the cable observers questioning of the
3 survey was a valid question?

4 A No, I did not.

5 Q Now I'd also asked you whether or not in
6 making your calculation that you looked at the license
7 fees for the various programming services that were
8 totaled in the top box, the CNN, ESPN and USA, do you
9 see those?

10 A Uh-huh.

11 Q FAM Family and TBS and Lifetime?

12 A Right.

13 Q Using those, you have to use those six
14 with what Kagan has given as the top rate as well as
15 the MSO average rate to come up with \$.17, is I guess
16 the license fee per \$1.61 of their cable bill and then
17 you had to take the \$.17 as a fraction of \$1.61 to get
18 \$.11 as a fraction of the same fraction as a \$1. Did
19 I explain that right?

20 A Yes.

21 Q So in trying to figure out the
22 relationship between license fees and value was the

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1 entire effort that you've engaged in?

2 A That's right.

3 Q And it's the value that a cable subscriber
4 in response to some survey that you never saw or
5 analyzed gave at this number of \$2.28?

6 A That's right.

7 Q And you are not an economist?

8 A That's right.

9 Q And when you were looking -- do you know
10 for what reason you used the September 30, 1995 pages
11 which I have attached as the pages which followed in
12 sequence from the 1993 pages?

13 A This is used to create the projections
14 with the annual growth rates.

15 Q Now when you were -- are you a subscriber
16 to Paul Kagan where you worked?

17 A I believe PBS is, yes.

18 Q PBS and it comes as a package, I mean not
19 a package, but as a -- it doesn't look like this.
20 It's like a newsletter or booklet, isn't it, not all
21 necessarily stapled together, but multiple pages?

22 A Right.

1 Q I should have brought mine. I'd like to
2 mark as our next exhibit, actually this is going to be
3 remarked 7X. I have put this in as 7X. I withdrew
4 it. I'm going to remark it again as 7X so the record
5 is clear.

6 (The document referred to was
7 marked for identification as
8 Exhibit No. SBCA 7-X.)

9 I'm going to reidentify it, but that way
10 the numbers are consistent.

11 (Pause.)

12 Mr. Wilson, I ask you to take a quick look
13 at this document.

14 (Pause.)

15 CHAIRMAN GRIFFITH: I'm sorry, go ahead.

16 BY MR. SEIVER:

17 Q Have you had a chance to look over this
18 latest document that I handed you?

19 A I have.

20 Q 21X? I'm sorry, this is 7X. This is 7X.
21 And noticing that it says Cable TV Programming,
22 September 30, 1995, page 5 of 12 and the other

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1 document that you said you had looked at is also dated
2 September 30, 1995 and it's Cable TV Programming.
3 Does this refresh your recollection whether when you
4 looked at the document that's PBS 0151 and 0152 that
5 you would have looked at the pages 0014 and 0015 as
6 well?

7 MS. WOODS: Your Honor, if I may clarify,
8 I believe 0015 and 0014 were actually sent in response
9 to a document request of Ms. McLaughlin.

10 CHAIRMAN GRIFFITH: As opposed to this
11 witness?

12 MR. SEIVER: I understand and even if they
13 hadn't been, because it disappeared in that same issue
14 I would have asked the witness in reading this issue
15 did he see this, did he rely on this?

16 THE WITNESS: I don't recall seeing this
17 and reading that issue.

18 BY MR. SEIVER:

19 Q When you looked it over, did you have an
20 understanding of the meaning of real cost and basic
21 networks to cable affiliates, is that meaningful to
22 you?

1 MR. GARRETT: Your Honor, I'm going to
2 object to these questions here. The witness said he's
3 not familiar with this particular document.

4 The compound problem here, one of our
5 witnesses is Mr. Gerbrandt who actually authored of
6 this publication, a senior analyst. He will be coming
7 in to testify next Tuesday. If Mr. Seiver wants to
8 ask questions about this document, I have no problem
9 in asking Mr. Gerbrandt. I think rather than having
10 questions and a record from the witness who is not
11 familiar which what was done here by Mr. Gerbrandt or
12 Kagan Associates, the question should not be allowed.

13 CHAIRMAN GRIFFITH: All right.

14 MR. SEIVER: This witness relied on two
15 different publications, owned or operated by Mr.
16 Gerbrandt and this -- are pages from the publication.
17 I think this is proper examination if he understands
18 what this is and if it's relevant to the calculations
19 he made based on Mr. Gerbrandt's numbers. It's a
20 completely different question from Mr. Gerbrandt.

21 CHAIRMAN GRIFFITH: All right.

22 MS. WOODS: Your Honor, the information

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1 that this witness relied on is one line from the
2 second page of PBS 0152 for the calculation that's in
3 question. That is the calculations for the box on
4 page 39. Certainly the first page of SBCA 7X is not
5 a document that was produced as underlying the
6 testimony of this witness. there's nothing in his
7 testimony regarding this information and so I think to
8 that extent, it's improper, obviously to the extent
9 that we produced this other document and he relied on
10 something from it for his testimony, I think that
11 would be proper.

12 MR. GARRETT: Your Honor, in this
13 proceeding, when hearings are done, we're all going to
14 put together a set of proposed findings and fact.
15 Certainly part of those proposed findings and fact
16 will be devoted to answering questions about the
17 meaning of this document, these numbers here.

18 I simply submit that the best person to
19 get that information is the one who authored this
20 particular publication and not somebody who simply
21 reviewed it.

22 CHAIRMAN GRIFFITH: Isn't he asking him

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1 about the calculations he made using this document,
2 one line of the documentation page 2?

3 MR. GARRETT: I thought he said he was not
4 familiar with -- the question that was asked and that
5 I objected to was whether he was familiar with the
6 sense of the article here, the point that was being
7 made in this article with these particular numbers.
8 I didn't understand that to be what he relied on.

9 CHAIRMAN GRIFFITH: I think the feeling of
10 the panel at this point is that the objection is
11 sustained in part and denied in part and that we feel
12 that you can cross examine the witness concerning any
13 portion of this document that he used, if he did.
14 Otherwise, the objection is sustained as to the
15 remainder of the document.

16 MR. SEIVER: Well, Your Honor, if I may
17 just be heard on that one more moment. This witness
18 has come to this hearing and he has given numbers in
19 that chart on page 39 as to what license fees are and
20 he's not said it with any qualifications. He's not
21 said anything that says this is the way I calculated
22 it. I don't know how I can effectively cross examine

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1 him and attempt to impeach him if I can't use
2 information which is clearly related to the
3 information he used without testing him about it.

4 To say that he didn't rely on it, it would
5 be as if I had a document that said the April 30, 1993
6 issue was all wrong and I'll say well, did you look at
7 that? Didn't look at it. I can't get any information
8 in about it. That's the essence of what I'm trying to
9 get him to understand is does this mean anything to
10 him. If he says it means nothing to him, then that's
11 fine, but I want to get him to make sure that I
12 understand what he did because if he doesn't
13 understand what it means and it doesn't mean anything
14 to him, I think that's directly relevant to the
15 validity and accuracy of the objection.

16 CHAIRMAN GRIFFITH: I took it to be Mr.
17 Garrett's objection to be the fact that -- that you
18 were asking whether or not this witness agrees or
19 disagrees with the contents of this particular
20 document.

21 MR. SEIVER: I want to know if he
22 understood what this was about. If he understood what

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1 Mr. Kagan in this particular box versus the one in the
2 there document was putting to its subscribers.

3 MS. WOODS: Your Honor, if we can just
4 clarify, the box I believe we're talking about now on
5 Exhibit 7X, PBS page 14 is not a document that Mr.
6 Wilson says he relied on at any time.

7 MR. SEIVER: Precisely. That's my point
8 is that here's a document that I think is relevant
9 that he overlooked or didn't use or was even in the
10 same issue.

11 CHAIRMAN GRIFFITH: I believe your answer
12 -- is your answer, sir, that you did not rely on this
13 document?

14 THE WITNESS: You are correct.

15 CHAIRMAN GRIFFITH: That's what I thought
16 he said.

17 MR. SEIVER: And I wanted to just --

18 CHAIRMAN GRIFFITH: The other part is
19 argument now on your behalf isn't it?

20 MR. SEIVER: It is, but I guess all
21 impeachment is somewhat argument that if this is
22 relevant to the numbers that he utilized, if he said,

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1 if he wants to disagree with me and say it's not
2 relevant to the numbers --

3 CHAIRMAN GRIFFITH: What's the question
4 you want to ask him now? I guess maybe I've lost it.

5 MR. SEIVER: My initial question was did
6 he understand what this particular chart lays out and
7 I wanted to ask him the concept of setting off local
8 ad revenues against license fees to come up with what
9 is titled the real cost of basic networks. The cable
10 affiliates because if you look at that list of
11 networks the ones that he relied upon are also listed
12 in his particular box from the other issue.

13 MS. WOODS: Your Honor, if I may, this
14 strikes me as getting very far into what really ought
15 to be rebuttal testimony. If Mr. Seiver wants to put
16 on a witness to come in and say you should have done
17 the calculation this way or here's another way to do
18 it, that would be proper, but to ask this witness to
19 testify about this information that he didn't rely on
20 for this survey, I believe at this point is not
21 proper.

22 CHAIRMAN GRIFFITH: The objection is

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1 overruled. We're going to permit you to examine the
2 witness, cross examine the witness to the extent to
3 which he has any knowledge of this document, whether
4 he did indeed review the document, whether he relied
5 on it in any way and then you can preserve the rest of
6 your position with -- well, depending on how he
7 answers for your own case or for rebuttal.

8 BY MR. SEIVER:

9 Q Mr. Wilson, going back to 7X on the
10 presumption that this was part of the entire
11 publication of September 30, 1995, Cable TV
12 Programming, let me ask you the initial question.
13 Were you handed, when you were doing your analysis
14 just particular pages, or did you read the whole
15 issue?

16 A I did not read the whole issue.

17 Q So it would be fair to say that you didn't
18 even read or rely, neither read nor relied on the
19 material that's set forth on page 5?

20 A That's correct.

21 Q And I think you had already asked,
22 answered that when I asked you if you understood what

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1 it meant that you did not have an understanding of
2 what information is set out?

3 A That's right.

4 Q Fair enough. We've been talking before
5 about the distribution of public television
6 programming by satellite and that the two stations in
7 Philadelphia and Denver received off-air by an antenna
8 somewhere and then are uplinked and distributed to
9 both C-band subscribers as well as Prime Star's
10 particular bid power subscribers, right, do you
11 remember that?

12 A That's right.

13 Q Do you know if either of those public
14 television stations helped provide the feed through
15 any active participation of either a microwave link or
16 a fiber link to the uplink that's operated by either
17 satellite carrier?

18 A I do not know.

19 Q But your understanding is is that at least
20 the uplinking process, the cost to that is born
21 entirely by the satellite carriers?

22 A That's right.

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1 Q The public television stations or PBS or
2 CPB fund the satellite carriers and uplinking and
3 distributing the program?

4 A That's my understanding.

5 Q And the path, the path that's coming from
6 the satellite that is bringing the signal into the
7 homes then is something that is actually created that
8 secondary transmission is actually created through the
9 efforts of the satellite carriers for building the
10 uplink and establishing the path to the home, is that
11 right?

12 A That's correct.

13 Q And your understanding is also that the
14 satellite carriers package programming that is sold in
15 conjunction with the PBS signals that they uplink and
16 distribute. Is that right?

17 A Yes.

18 Q And do you understand that the purchasers
19 of the programming that include PBS generally buy in
20 packages as opposed to buying particular signals?

21 A I honestly don't know to what extent it
22 goes one way or the other.

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1 Q Do you believe it provides any value to
2 PBS, generally, to have its signal included in a
3 package of programming delivered to satellite
4 subscribers?

5 A Yes, I do.

6 MR. SEIVER: That's all I have. Thank
7 you.

8 CHAIRMAN GRIFFITH: All right, any other
9 cross examination? Any redirect?

10 MS. WOODS: There is, Your Honor. Might
11 I have just a couple of minutes?

12 CHAIRMAN GRIFFITH: All right. Do you
13 want five minutes?

14 MS. WOODS: Yes, that would be great.

15 CHAIRMAN GRIFFITH: All right, fine.
16 We'll take just five minutes.

17 (Off the record.)

18 CHAIRMAN GRIFFITH: Ms. Woods?

19 MS. WOODS: Thank you, Your Honor.

20 CHAIRMAN GRIFFITH: Yes.

21 REDIRECT EXAMINATION

22 BY MS. WOODS:

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1 Q Mr. Wilson, I just have a few questions
2 for you on redirect. First of all, do you recall
3 talking with Mr. Seiver about nonprogram minutes on
4 PBS on the contents of that?

5 A Yes, I do.

6 Q And are there educational elements to the
7 nonprogram minutes listed there?

8 MR. SEIVER: Objection. I'll just start
9 out -- leading questions. I want to make sure we
10 don't have leading questions from counsel.

11 CHAIRMAN GRIFFITH: Do you want to
12 rephrase the question?

13 MS. WOODS: Your Honor, I guess --

14 CHAIRMAN GRIFFITH: It didn't sound too
15 bad, though to tell you the truth.

16 (Laughter.)

17 MS. WOODS: He's trying to answer yes or
18 not and I was purposefully saying "and there are" --

19 CHAIRMAN GRIFFITH: Let me hear it again.
20 Go ahead.

21 MS. WOODS: I said "Are there educational
22 elements to the nonprogram minutes?"

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1 CHAIRMAN GRIFFITH: The objection is
2 overruled. I don't think that's leading.

3 MR. SEIVER: Yes sir.

4 BY MS. WOODS:

5 Q Could you describe those to us?

6 A Particularly in the area of the children's
7 programming, we have a service called Ready to Learn
8 which takes the children's programs and adds to them
9 outreach materials that day care providers and other
10 caregivers can use in conjunction with interstitial
11 elements between the programs that provide further
12 information and educational moments, basically, that
13 together make up a full package of children's
14 programming.

15 Q Could you just explain what interstitial
16 elements are?

17 A Interstitial coming between the spaces
18 between the programs, basically.

19 Q Now, Mr. Wilson, if I could ask you to
20 look again, do you have SBC Exhibit 13X before you?

21 A I don't have it any longer.

22 MR. SEIVER: I'm sorry, I took it.

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1 MS. WOODS: Thanks.

2 BY MS. WOODS:

3 Q If I could ask you to just take a look a
4 that again, Mr. Wilson. Do you recall speaking to Mr.
5 Seiver about the PBS, I believe what you called the
6 clear feed?

7 A Yes.

8 Q Now if you can turn to the side of SBCA
9 Exhibit 13X that has the Orbit Magazine logo on it?

10 A Right.

11 Q Over on the lefthand side there's a list
12 of C-band channels by interest?

13 A Right.

14 Q And if you could look under major
15 networks?

16 A Yes.

17 Q And just below the PBS designation that
18 you talked with Mr. Seiver about, could you read to us
19 what's on the next line?

20 A KRMA Denver, PBS.

21 Q Does that signal have one of these little
22 diamonds that indicates that it's scrambled?

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1 A Yes, it does.

2 Q Now what signals, I believe you discussed
3 this with Mr. Seiver, what signals compensable through
4 the rate set in this proceeding are carried by
5 satellite carriers?

6 A Those of our member stations.

7 Q And particularly is KRMA one of them?

8 A Yes.

9 Q Is there another one?

10 A WHYY.

11 Q And did you discuss with Mr. Seiver the
12 fact that there are subscribers to Netlink, do you
13 recall that?

14 A Yes, I do.

15 Q Can you tell us, if you know, is Netlink
16 a C-band service or a Ku-band service or do they
17 package programming for C-band or Ku-band?

18 A I believe Netlink, isn't that the
19 midpowered Ku-band or is it a C-band service, I don't
20 know. It's one or the other, I guess.

21 (Laughter.)

22 Q Okay, well, Mr. -- we discussed with Mr.

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1 Seiver the number of subscribers to Netlink, correct?

2 A That's right.

3 Q And do you recall how many that was?

4 A I recall he offered numbers of 800,000 for
5 the one service, the WHY Y service and something in the
6 neighborhood of 400,000 or 500,000 for KRMA. It was
7 a total of 1.3 million, was it not?

8 Q Okay, if I can just perhaps go back to
9 that. Do you recall that he talked to you about
10 579,000 subscribers for Netlink?

11 A That's right.

12 Q And then now are you familiar with Prime
13 Star, what type of service that is? Is that what size
14 dishes that service has?

15 A Those are the little dishes, the Ku-band
16 satellite dishes.

17 Q Right, and so how many subscribers did he
18 say there were to Prime Star?

19 A Somewhere in the neighborhood of 800,000.

20 Q And this clear feed that you talked to Mr.
21 Seiver about, is that available to subscribers to DBS
22 services?

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1 A No, that's a C-band feed and it's not
2 receivable on the DBS dishes.

3 Q Now I recognize that you're not familiar
4 with exactly which signal, which services have which
5 types of dishes, but do you -- are you aware of
6 whether or not there are subscribers who subscribe to
7 satellite services that offer programming for C-band
8 dishes?

9 A I am aware of subscribers to PBS services
10 on C-band dishes.

11 Q And Mr. Wilson, why if someone could get
12 a clear feed would they subscribe to a PBS service or
13 a service that included PBS anyway?

14 A I could only speculate, but I would assume
15 it's because for the ease of --

16 MR. SEIVER: I'll object to the
17 speculation.

18 CHAIRMAN GRIFFITH: Sustained.

19 BY MS. WOODS:

20 Q Now Mr. Wilson, all of the subscribers
21 we've talked about, the ones to Netlink and the ones
22 to Prime Star, are signals provided, are PBS signals

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1 provided to them for free by the satellite carriers?

2 A No. They charge for those subscriptions.

3 Q So all of those subscribers actually pay
4 to receive PBS signals?

5 A That's right.

6 Q Now do you recall talking with Mr. Seiver
7 a little bit about niche services?

8 A Yes.

9 Q And you described PBS, I believe, at one
10 point as a niche, as having niche services and another
11 point as a variety service?

12 A Yes.

13 Q Could you explain to us what you meant by
14 those terms and how they fit together?

15 A I think the variety comes from the fact
16 that we offer many niches on our program schedule. We
17 have programs that are targeted for people who enjoy
18 the performing arts. We have programming for news and
19 public affairs. We have programs in the area of drama
20 and we have children's programming and so forth and so
21 on. Each of those subject areas is a discrete niche,
22 I would say, and because we feature so many of them

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1 that is where a variety comes from.

2 Q Now I believe also talked with Mr. Seiver
3 a little bit about public television programming that
4 had previously been on public television that could
5 then show up on cable networks?

6 A That's right.

7 Q Now you also testified or could you just
8 tell us again, how much original programming does PBS
9 provide to its members stations each year?

10 A 1600 hours.

11 Q So is that what would be called first run
12 programming?

13 A Yes.

14 Q What is the value of first run
15 programming?

16 A I think it's quite high, both to the
17 viewer as well as to the satellite carrier. The fact
18 that the programming is premiering on PBS first is of
19 great importance.

20 Q And is it that type of first run
21 programming that the cable networks are showing?

22 A No, not that volume certainly.

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1 Q The PBS first run programming? Are cable
2 networks showing PBS first run programming?

3 A Yes, after -- well, I guess I don't --
4 it's impossible for them to show first run programming
5 that PBS has shown so I guess I don't understand your
6 question.

7 Q In other words, perhaps I'll try it
8 another way. Is the programming that is shown by the
9 cable networks perhaps characterized as second run PBS
10 programming?

11 A In many cases, yes.

12 Q And what does that mean?

13 A In effect, they're getting it in a second
14 life, in a repeat mode after public television is
15 through with it.

16 Q So it's already been shown on PBS?

17 A That's right.

18 Q That's all I have.

19 CHAIRMAN GRIFFITH: All right.

20 MR. SEIVER: No further questions.

21 CHAIRMAN GRIFFITH: All right. All right,
22 sir, thank you very, very much. You may step down.

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1 You're free to go.

2 THE WITNESS: Thank you.

3 CHAIRMAN GRIFFITH: Does that conclude the
4 proceedings for today?

5 MS. DONOGHUE: I just have one question.
6 I'm Kristen Donoghue for American Sky Broadcasting.
7 I had mentioned yesterday that Craig Hoover from
8 American Sky Broadcasting might have a scheduling
9 issue on May 17, but he's taken care of that, so we're
10 all set.

11 CHAIRMAN GRIFFITH: Thank you. Thank you
12 very much.

13 MS. DONOGHUE: It's actually rescheduled
14 for the following day.

15 CHAIRMAN GRIFFITH: We haven't resolved
16 these two problems yet, but I understand that
17 Saturday, I'm going to call it tentative at the
18 moment. We want it there just in case, all right?

19 Go ahead and step down. I don't want to
20 hold you up any further.

21 (The witness was excused.)

22 We're going to begin at 9:30 tomorrow

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1 morning. We're going to pick up with the cross
2 examination of Dr. Crandall and then we have someone
3 else coming on.

4 MS. WOODS: Mr. Sternfeld.

5 CHAIRMAN GRIFFITH: Mr. Sternfeld, okay.

6 (Whereupon, at 4:45 p.m., the hearing was
7 recessed to reconvene tomorrow, Thursday, March 20,
8 1997 at 9:30 a.m.)
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CERTIFICATE

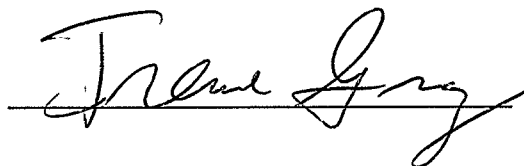
This is to certify that the foregoing transcript in
the matter of: Hearing: Satellite Rate Adjustment,
 Docket No. 96-3 CARP-SRA

Before: Library of Congress
 Copyright Arbitration Royalty Panel

Date: March 19, 1997

Place: Washington, DC

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to
typewriting.

A handwritten signature in cursive script, appearing to read "Irene Gray", is written over a horizontal line.

Copyright Arbitration
Royalty Panel



Satellite Rate Adjustment

03-19-97

p1041-1333

WP5.1

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